

Request List of Routine Program Changes 2018, Hawaii CZM Program

Added - Attachment I	
1)	HRS § 342D-61
2)	HRS § 342D-72
3)	HAR Chapter 11-20
4)	HAR Chapter 11-260.1
5)	HAR Chapter 11-261.1
6)	HAR Chapter 11-262.1
7)	HAR Chapter 11-263.1
8)	HAR Chapter 11-264.1
9)	HAR Chapter 11-265.1
10)	HAR Chapter 11-266.1
11)	HAR Chapter 11-268.1
12)	HAR Chapter 11-270.1
13)	HAR Chapter 11-271.1
14)	HAR Chapter 11-273.1
15)	HAR Chapter 11-279.1
16)	HAR Chapter 11-280.1
17)	HAR Chapter 13-86.1
18)	HAR § 19-42-131
19)	HAR § 19-42-136
20)	HAR § 19-42-161
21)	HAR § 19-42-162
22)	HAR § 19-42-164
23)	City and County of Honolulu Rules Chapter 20-3
Modified - Attachment II	
24)	HRS § 171-58.5
25)	HRS § 205A-22
26)	HRS § 205A-44(a)
27)	HRS § 342D-6.5
28)	SMA Rules of the County of Hawaii §§ 9-4(e)(2)(A) and(R), §§ 9-4(q) and (r), § 9-8, § 9-9, §§ 9-10(a), (b), (d), (e), (f) and (i), and § 9-11(b)
29)	HAR §§ 13-60.4-2, 13-60.4-3, and 13-60.4-5
30)	HAR § 13-256-152
Deleted - Attachment III	
31)	HAR Chapter 11-260
32)	HAR Chapter 11-261
33)	HAR Chapter 11-262
34)	HAR Chapter 11-263
35)	HAR Chapter 11-264
36)	HAR Chapter 11-265
37)	HAR Chapter 11-266
38)	HAR Chapter 11-268
39)	HAR Chapter 11-270
40)	HAR Chapter 11-271
41)	HAR Chapter 11-279
42)	HAR Chapter 11-280

Modified

24) HRS § 171-58.5

Relating to: **Prohibitions**

26) HRS § 205A-44(a)

Relating to: **Prohibitions**

ACT 120

does not exist or is not in the possession of the party seeking recordation of the judgment. Failure to disclose or disclosure of an incorrect social security number, Hawaii tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment, order, or decree. When any judgment, order, or decree is fully paid, the creditor or the creditor's attorney of record in the action, at the expense of the debtor, shall execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, section 501-102, sections 501-241 to 501-248, and ~~sections 501-261 to 501-269~~ part II of chapter 501 shall govern.

The party seeking to record or register a judgment, order, or decree shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment, order, or decree to be recorded or registered."

SECTION 11. Act 120, Session Laws of Hawaii 2009, is amended by amending section 21 to read as follows:

"SECTION 21. This Act shall take effect on July 1, 2009; provided that section 2 of this Act shall take effect on July 1, 2011~~], and shall be repealed on December 31, 2014~~; provided further that section 16 of this Act shall take effect on July 1, 2009, and shall be repealed on the effective date of administrative rules adopted by the department of land and natural resources that address the establishment of transaction fees for each recording in the bureau of conveyances and in the office of the assistant registrar of the land court; provided further that section 17 of this Act shall take effect on January 1, 2012; and provided further that section 18 of this Act shall take effect upon its approval and shall be repealed on January 31, 2010."

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 13. This Act shall take effect upon its approval; provided that section 2 of this Act shall be repealed on December 31, 2014.

(Approved June 14, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 120

H.B. NO. 17

A Bill for an Act Relating to Coastal Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-58.5, Hawaii Revised Statutes, is amended to read as follows:

"**§171-58.5 Prohibitions.** The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The inadvertent taking from seaward of the shoreline of [such] these materials, ~~[not in excess of one gallon per person per day for reason-~~

~~able, personal, noncommercial use;] such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;~~

- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline, or construction or maintenance of state approved lagoons, harbors, launching ramps, or navigational channels with a permit authorized under chapter 183C;
- (3) The clearing of ~~[such]~~ these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless this placement would result in significant turbidity; ~~[or]~~
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless ~~[such]~~ the placement would result in significant turbidity~~[-];~~;
- (5) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or
- (6) For the response to a public emergency or a state or local disaster.”

SECTION 2. Section 205A-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

- (1) The inadvertent taking from the shoreline area of the materials, ~~[not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that stricter provisions may be established by the counties;] such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;~~
- (2) Where the mining or taking is authorized by a variance pursuant to this part;
- (3) The clearing of ~~[the]~~ these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless ~~[such]~~ the placement would result in significant turbidity; ~~[or]~~
- (4) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing for purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity~~[-];~~;
- (5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;
- (6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or
- (7) For the response to a public emergency or a state or local disaster.”

SECTION 3. Act 160, Session Laws of Hawaii 2010, is amended by adding a new section to be appropriately inserted and to read as follows:

“SECTION 4A. This Act shall not be construed to modify or alter any agreement of the department of land and natural resources that was in effect or executed on the effective date of this Act.”

ACT 121

SECTION 4. Act 160, Session Laws of Hawaii 2010, is amended by amending section 7 to read as follows:

~~“SECTION 7. This Act shall take effect upon its approval; provided that on June 30, 2013, this Act shall be repealed and sections 115-5, 115-9, and 205A-2(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read one day prior to the effective date of this Act.”~~

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 2013.

(Approved June 14, 2013.)

ACT 121

S.B. NO. 1161

A Bill for an Act Relating to Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) An unauthorized vessel may be impounded by the department at the sole [cost and] risk of the owner of the vessel, if the vessel is not removed after the seventy-two-hour period or if during that period the vessel is removed and removed in the harbor or mooring or anchorage area or any other state harbor or mooring or anchorage area without a use permit. The owner of the vessel shall be solely responsible for all costs of the impoundment and the disposal of the vessel. Any proceeds resulting from the impoundment and the disposal of the unauthorized vessel shall be used first to pay the costs of impoundment and disposal and then to pay any mooring fees due. If the proceeds resulting from the impoundment and the disposal are inadequate to pay for all costs and mooring fees due, the owner of the vessel shall remain liable for the outstanding costs and mooring fees.”~~

SECTION 2. Section 200-31, Hawaii Revised Statutes, is amended to read as follows:

~~“[§200-31] Vessels required to be registered and numbered. (a) Every undocumented vessel shall be registered and numbered before its use or operation on or in the waters of the State on an annual basis in accordance with the rules of the department except:~~

- ~~(1) Foreign vessels temporarily using the waters of this State;~~
- ~~(2) Public vessels of the United States;~~
- ~~(3) Ships' life boats; and~~
- ~~(4) Other vessels exempted by the department, if federal laws and requirements permit the department to exempt the vessels.~~
- ~~(b) No vessel registration shall be renewed or transferred if:~~
 - ~~(1) The registered owner is delinquent in payment of any moneys due and payable to the department;~~
 - ~~(2) The registered owner has pending a citation for violation of any of the department's rules; or~~

Modified

25) HRS § 205A-22

Relating to: **Definitions**



GOV. MSG. NO. 1342

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 06, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

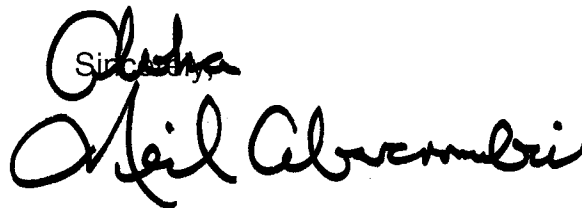
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 06, 2012, the following bill was signed into law:

SB2335 HD2 CD1

RELATING TO SPECIAL MANAGEMENT AREAS.
Act 239 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

'12 JUL 10 A9:49

Approved by the Governor

on JUL 6 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 239

S.B. NO. 2335
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO SPECIAL MANAGEMENT AREAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to clarify an
2 amendment to section 205A-22, Hawaii Revised Statutes, made by
3 Act 153, Session Laws of Hawaii 2011, to require the counties to
4 concurrently process subdivision and special management area use
5 permits to ensure that a special management area use permit is
6 processed before final subdivision approval.

7 SECTION 2. Section 205A-22, Hawaii Revised Statutes, is
8 amended by amending the definition of "development" to read as
9 follows:

10 "Development" means any of the uses, activities, or
11 operations on land or in or under water within a special
12 management area that are included below:

13 (1) Placement or erection of any solid material or any
14 gaseous, liquid, solid, or thermal waste;

15 (2) Grading, removing, dredging, mining, or extraction of
16 any materials;



1 (3) Change in the density or intensity of use of land,
2 including but not limited to the division or
3 subdivision of land;

4 (4) Change in the intensity of use of water, ecology
5 related thereto, or of access thereto; and

6 (5) Construction, reconstruction, demolition, or
7 alteration of the size of any structure.

8 "Development" does not include the following:

9 (1) Construction or reconstruction of a single-family
10 residence that is less than seven thousand five
11 hundred square feet of floor area and is not part of a
12 larger development;

13 (2) Repair or maintenance of roads and highways within
14 existing rights-of-way;

15 (3) Routine maintenance dredging of existing streams,
16 channels, and drainage ways;

17 (4) Repair and maintenance of underground utility lines,
18 including but not limited to water, sewer, power, and
19 telephone and minor appurtenant structures such as pad
20 mounted transformers and sewer pump stations;

21 (5) Zoning variances, except for height, density, parking,
22 and shoreline setback;



- 1 (6) Repair, maintenance, or interior alterations to
- 2 existing structures;
- 3 (7) Demolition or removal of structures, except those
- 4 structures located on any historic site as designated
- 5 in national or state registers;
- 6 (8) Use of any land for the purpose of cultivating,
- 7 planting, growing, and harvesting plants, crops,
- 8 trees, and other agricultural, horticultural, or
- 9 forestry products or animal husbandry, or aquaculture
- 10 or mariculture of plants or animals, or other
- 11 agricultural purposes;
- 12 (9) Transfer of title to land;
- 13 (10) Creation or termination of easements, covenants, or
- 14 other rights in structures or land;
- 15 (11) Final subdivision approval; provided that in counties
- 16 that may automatically approve tentative subdivision
- 17 applications as a ministerial act within a fixed time
- 18 of the submission of a preliminary plat map, unless
- 19 the director takes specific action, a special
- 20 management area use permit if required, shall be
- 21 processed concurrently with an application for
- 22 tentative subdivision approval or after tentative



- 1 subdivision approval and before final subdivision
2 approval;
- 3 (12) Subdivision of land into lots greater than twenty
4 acres in size;
- 5 (13) Subdivision of a parcel of land into four or fewer
6 parcels when no associated construction activities are
7 proposed; provided that any land [~~which~~] that is so
8 subdivided shall not thereafter qualify for this
9 exception with respect to any subsequent subdivision
10 of any of the resulting parcels;
- 11 (14) Installation of underground utility lines and
12 appurtenant aboveground fixtures less than four feet
13 in height along existing corridors;
- 14 (15) Structural and nonstructural improvements to existing
15 single-family residences, where otherwise permissible;
- 16 (16) Nonstructural improvements to existing commercial
17 structures; and
- 18 (17) Construction, installation, maintenance, repair, and
19 replacement of civil defense warning or signal devices
20 and sirens;
- 21 provided that whenever the authority finds that any excluded
22 use, activity, or operation may have a cumulative impact, or a

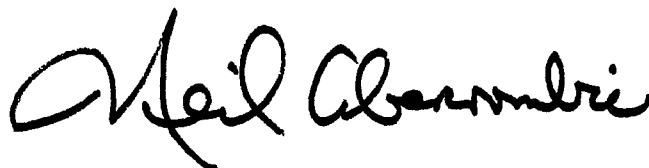


1 significant environmental or ecological effect on a special
2 management area, that use, activity, or operation shall be
3 defined as "development" for the purpose of this part."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 6 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

Modified

27) HRS § 342D-6.5

Relating to: **Hawaiian loko i‘a**



GOV. MSG. NO. 1339

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 13, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 13, 2015, the following bill was signed into law:

HB393 HD2 SD2

RELATING TO HAWAIIAN FISHPONDS
ACT 230 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 13 2015

ORIGINAL

ACT 230

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.B. NO. 393
H.D. 2
S.D. 2

A BILL FOR AN ACT

RELATING TO HAWAIIAN FISHPONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the repair or
2 restoration of Hawaiian loko i'a (fishponds) may require permits
3 from the department of land and natural resources, department of
4 health, office of planning, federal agencies, and county
5 agencies. The legislature further finds that the permit process
6 for repair or restoration of loko i'a may be time-consuming,
7 complicated, confusing, and inconsistent across agencies.
8 Burdensome regulations and permit requirements have historically
9 prevented community organizations or native Hawaiian lawai'a
10 (aquaculturalists) from initiating projects to restore, repair,
11 or maintain loko i'a.

12 In practice, it has reportedly taken up to ten years to
13 obtain the certifications and permits required for loko i'a
14 restoration and repair by state and federal law, including the
15 Clean Water Act and the Coastal Zone Management Act. For
16 example, sections 401 and 404 of the Clean Water Act require
17 first a water quality certification and permit from the



1 department of health and then a permit from the Army Corps of
2 Engineers before loko i'a activities may proceed.

3 Government and community interests have demonstrated their
4 willingness and ability to work together to streamline the
5 permit process for Hawaiian loko i'a. Pursuant to Senate
6 Resolution No. 86 (2012), the department of land and natural
7 resources, office of planning, and department of health have led
8 these efforts, including coordination with cultural
9 practitioners, community groups, and affected federal and county
10 agencies.

11 The department of land and natural resources is in the
12 final stages of implementing a statewide programmatic general
13 permit and programmatic agreement that would allow most
14 applicants for loko i'a restoration and repair permits to submit
15 a single permit application for review by an interagency
16 advisory group and relevant resource agencies instead of a
17 series of single-agency applications. Upon the appropriate
18 findings by the advisory group, the department of land and
19 natural resources would be able to issue the applicant an
20 authorization to proceed. After a final thirty-day comment
21 period, the permit would be issued and the applicant may conduct



1 restoration and repair activities in compliance with existing
2 environmental protection and other laws, including the Clean
3 Water Act.

4 The purpose of this Act is to ensure that the statewide
5 programmatic general permit and programmatic agreement function
6 as intended by specifying that a permit applicant that has
7 received notice of authorization to proceed from the department
8 of land and natural resources is not required to obtain
9 additional water quality certification from the department of
10 health. The legislature finds that the intent of this Act is to
11 improve state government efficiency and response time in the
12 administration of water pollution control. It is not the intent
13 of the legislature to limit or impede state environmental
14 controls on water pollution.

15 SECTION 2. Section 342D-6.5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+] §342D-6.5 [+] Hawaiian [~~fishponds.~~] loko i'a. (a) The
18 department shall process applications for permits and water
19 quality certifications for the reconstruction, restoration,
20 repair, or reuse of any loko i'a, or Hawaiian fishpond as defined
21 in section 183B-1, before all other permits and certifications.



1 The director shall render a decision on the completeness of any
2 application for that permit or water quality certification
3 within thirty days of receipt. Applications for [~~fishpond~~] loko
4 i'a reconstruction, restoration, or repair that are incomplete
5 shall be denied without prejudice. The director shall render a
6 decision on any complete application for a permit or water
7 quality certification for any [~~fishpond~~] loko i'a within one
8 hundred fifty days.

9 (b) The department shall waive the requirement to obtain
10 water quality certification under this chapter for any person
11 that has received notice of authorization to proceed from the
12 department of land and natural resources office of conservation
13 and coastal lands under the statewide programmatic general
14 permit for the restoration, repair, maintenance, and operation
15 of loko i'a.

16 (c) For purposes of this section:
17 "Water quality certification" means state certification
18 pursuant to section 401 of the federal Clean Water Act."

19 SECTION 3. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 4. This Act shall take effect upon its approval.



H.B. NO. 393
H.D. 2
S.D. 2

APPROVED this 13 day of JUL, 2015

A handwritten signature in black ink, appearing to read "David Ige". The signature is written in a cursive style with a large, sweeping flourish under the name.

GOVERNOR OF THE STATE OF HAWAII

§342D-6.5 Hawaiian loko i`a. (a) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any loko i`a, or Hawaiian fishpond as defined in section 183B-1, before all other permits and certifications. The director shall render a decision on the completeness of any application for that permit or water quality certification within thirty days of receipt. Applications for loko i`a reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any loko i`a within one hundred fifty days.

(b) The department shall waive the requirement to obtain water quality certification under this chapter for any person that has received notice of authorization to proceed from the department of land and natural resources office of conservation and coastal lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of loko i`a.

(c) For purposes of this section:

"Water quality certification" means state certification pursuant to section 401 of the federal Clean Water Act. [L 1995, c 177, §3; am L 2015, c 230, §2]

[Previous](#)

[Vol06_Ch0321-0344](#)

[Next](#)

Modified

28) Special Management Area Rules of the County of Hawaii §§ 9-4(e)(2)(A) and(R), §§ 9-4(q)and (r), § 9-8, § 9-9, and §§ 9-10(a), (b), (d), (e), (f) and (i), § 9-11(b)

Relating to: **Special Management Area (SMA)**

RULE 9. SPECIAL MANAGEMENT AREA

9-1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai‘i Revised Statutes, the rule hereinafter contained is hereby established and shall apply to all lands within the Special Management Area of the County of Hawai‘i.

9-2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai‘i. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

9-3 Title

This rule shall be known as the “Special Management Area Rule of the County of Hawai‘i.”

9-4 Definitions

For the purpose of this rule, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) “Assessment” means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area Use Permit is required.
- (b) “Public Works Director” means the Director of the Department of Public Works of the County of Hawai‘i .
- (c) “Crops” means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use including but not limited to the raising of livestock.
- (d) “Cultural” pertains to traditional and customary practices and usage of resources to fulfill responsibilities and rights possessed and exercised by ahupuaa tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.
- (e) “Development” means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:
 - (1) “Development” includes the following:
 - (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

- (B) Grading, removing, dredging, mining, or extraction of any materials;
 - (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (D) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
 - (E) Construction, reconstruction, demolition, or alteration of the size of any structure.
- (2) "Development" does not include the following uses, activities or operations:
- (A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development. Floor area shall be the total area of all floors of a building(s) associated with the single-family residence, including a basement and accessory structures, measured along the exterior walls of such building(s). The floor area of a building(s), or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above;
 - (B) Repair or maintenance of roads and highways within existing rights-of-way;
 - (C) Routine maintenance dredging of existing streams, channels, and drainage ways;
 - (D) Repair and maintenance of utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
 - (E) Zoning variances, except for height, density, parking, and shoreline setback;
 - (F) Repair, maintenance, or interior alterations to existing structures or relating to existing uses;
 - (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan;
 - (H) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
 - (I) Transfer of title of land;

- (J) Creation or termination of easements, covenants, or other rights in structures or land;
 - (K) Subdivision of land into lots greater than twenty acres in size;
 - (L) The amendment of the General Plan, State Land Use Boundary amendments and changes of zone;
 - (M) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
 - (N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - (O) Structural and non-structural improvements to existing single-family residences, where otherwise permissible; and
 - (P) Non-structural improvements to existing commercial structures.
 - (Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.
 - (R) Plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the Division of Boating and Ocean Recreation of the State Department of Land and Natural Resources.
- (3) Any proposed use, activity, or operation listed in Section 9-4(e)(2) shall be deemed to be “Development” until the Director has determined it to be exempted from the definition of “development.”
- (4) Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as “development” for the purpose of this rule.
- (f) “EIS” means an informational document prepared in compliance with Chapter 343, HRS, and the Hawai‘i Administrative Rules, Title II, Chapter 200 (Environmental Impact Statement Rules). An EIS discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

- (g) “Estuary” means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the seawater is measurably diluted with fresh water derived from land drainage.
- (h) “Native Hawaiian Rights” means those rights defined in and protected under HRS 1-1, HRS 7-1, HRS 174C-101, Article XII, Section 7 of the Hawai‘i State Constitution, and in rulings of Hawai‘i case law.”
- (i) “Owner” means all equitable and legal holders or lessees of real property. Lessees shall present certification of approval from the legal owner.
- (j) “Person” means and includes any individual, organization, partnership, or corporation, including any utility and any agency of government.
- (k) “Petitioner” means and includes any person who seeks permission or authorization which the Commission may grant under this rule.
- (l) “Shoreline” means the upper reaches of the wash of waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.
- (m) “Shoreline Survey” means the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a registered land surveyor in the State of Hawai‘i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chairman of the Board of Land and Natural Resources.
- (n) “Single-Family Residence” means a detached building designed for and/or used as the complete facility for cooking, sleeping and living area of a single family only and occupied by no more than one family. Single family residences may include uses or structures normally considered accessory to the single family facilities provided that any such uses or structures are situated on the same lot or building site and are in compliance with all requirements of any county or state regulation, statute, or ordinance. A single family shall include all persons living in a dwelling related by blood, marriage or by adoption or a group comprised of not more than five persons not related by blood, marriage or by adoption.
- (o) “Special Management Area” means the land extending inland from the shoreline as delineated on the maps filed with the Commission as of June 8, 1977, or as amended pursuant to Section 9-21.
- (p) “Special Management Area Emergency Permit” means an action by the Director authorizing development in cases of emergency requiring immediate action to prevent substantial harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.

- (q) “Special Management Area Minor Permit” means an action by the Director authorizing development, the valuation of which is not in excess of ~~[\$125,000]~~\$500,000 and which has no cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (r) “Special Management Area Use Permit” means an action by the Commission authorizing development, the valuation of which exceeds ~~[\$125,000]~~\$500,000 or which may have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (s) “Structure” means and includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- (t) “Use” means any purpose for which a structure or a tract of land is designed, arranged, intended, maintained or occupied or any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.
- (u) “Valuation” shall be determined by the Director and means the estimated cost to replace the structure, in kind, based on current replacement costs, or in the case of other developments, as defined in 9-4(e)(1), the fair market value of the development.
- (v) “Vegetation Growth” means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.
- (w) “Artificial light” or “artificial lighting” means the light emanating from any fixed human-made device.
- (x) “Directly illuminate” means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.
- (y) “Ocean waters” means all waters seaward of the shoreline within the jurisdiction of the State.

9-5 Special Management Area

Special Management Area of the County shall be as delineated on such maps filed with the Authority as of June 8, 1977, or as may be amended pursuant to Section 9-21, and shall be the official Special Management Area to be administered and enforced under this rule.

9-6 Objectives and Policies of Chapter 205A, HRS

- (a) The objectives and policies of the coastal zone management program shall be those set forth in Section 205A-2, HRS, as amended.
- (b) The Commission shall implement these objectives and policies, as appropriate.

9-7 Special Management Area Guidelines

The Special Management Area guidelines set forth in Section 205A-26, HRS, as amended, shall be used by the Commission, as appropriate, for the review of developments proposed in the Special Management Area.

9-8 Permits Required for Development

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.
- (c) Special Management Area Minor, Use or Emergency Permits or exemptions validly issued by the Department or the Commission, subsequent to any amendment to Chapter 205A, Hawai'i Revised Statutes but preceding any supportive amendment to this rule shall continue to be considered valid.

9-9 Authority of the Department in the Special Management Area

All development within the Special Management Area shall be administered through the Department under this rule pursuant to the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS.

To improve the efficiency of the Commission's review, approval and permitting processes granted upon it by Chapter 205A-22, Hawai'i Revised Statutes and in accordance with Rule 9 herein, the Commission hereby delegates to the Director the authority to process assessments, determinations and conditions regarding exemptions, issue and enforce Special Management Area Minor Permits and Special Management Area Emergency Permits, and to administer, interpret, and enforce terms, scope and conditions set forth in Special Management Area Use Permits issued by the Commission.

9-10 Assessment

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed ~~[\$125,000]~~\$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.
- (b) For proposed uses, activities or operations that are subject to an assessment, the applicant shall submit to the Department a Special Management Area Assessment (SMAA) on a form prepared by the Department. The review and acceptance of the assessment application shall follow the procedures pursuant to Section 25-2-3 (Review and acceptance of applications) in Chapter 25, Hawai'i County Code. The information on the SMAA form shall include, but not be limited to, the following:
 - (1) The tax map number for the property.

- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon and any other information necessary to a proper determination relative to the specific request.
- (3) A written description of the proposed project and a statement of objectives.
- (4) An Environmental Assessment (EA) or Environmental Impact Statement (EIS) if required under Chapter 343, HRS, or when required by the Director.
- (5) A written description of the anticipated impacts of the proposed uses, activities or operations on the Special Management Area including but not limited to:
 - (A) Description of environmental setting;
 - (B) The relationship of the proposed action to land use plans, policies, and control of the affected area;
 - (C) The probable impact of the proposed action on the environment;
 - (D) Any probable adverse environmental effects which cannot be avoided;
 - (E) Alternatives to the proposed action;
 - (F) Mitigating measures proposed to minimize impact; and
 - (G) Any irreversible and irretrievable commitment of resources.
- (6) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
 - (A) The identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area;
 - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (C) The feasible action, if any, to be taken to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (7) A written statement discussing the proposed use, activity or operation in relation to the objectives and policies as provided by Chapter 205A, HRS.
- (8) A statement of the valuation of the proposed use, activity or operation.
- (9) A shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed

development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline.

- (10) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used.
- (11) Any other plans or information required by the Director.

An EIS that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.

(12) A fifty dollar (\$50) filing fee.

- (c) The Director shall assess the proposed use, activity or operation upon the applicant's compliance with Section 9-10B based on the following criteria:
 - (1) The valuation of the proposed use, activity or operation.
 - (2) The potential effects and significance of each specific circumstance of the use, activity or operation, according to the criteria of substantial adverse effect established by Section 9-10H.
- (d) The Director, within ~~thirty-five~~ **sixty** calendar days after the receipt of all filing requirements or within a longer period as may be agreed to by the applicant, shall notify the applicant in writing that:

The proposed use, activity or operation does not constitute a development or is exempt from the definition of development; or

A Special Management Area Minor Permit is being issued; or

A Special Management Area (Major) Use Permit is required. ~~;~~ **or**

Return an incomplete application with a written explanation or its deficiencies.

If the proposed use, activity, or operation is less than ~~[\$125,000]~~ **\$500,000** in value and the Director fails to act within the ~~thirty-five~~ **sixty** calendar day period or within such longer period as may have been agreed to by the applicant, the proposed use, activity or operation shall be forwarded to the Commission for its consideration. The notice and hearing procedures and action shall be the same as under Section 9-11 (c) through 9-11 (f) .

- (e) Where it is found that the proposed use, activity or operation is not in excess of ~~[\$125,000]~~ **\$500,000** in valuation; and will not have a cumulative impact, or a substantial adverse effect on the Special Management Area, and after review by the Public Works Director for compliance with Chapter 27, Flood Control, of the

Hawai'i County Code, the Director shall issue a Special Management Area Minor Permit.

- (1) The issuance of such minor permit shall be subject to any reasonable terms or conditions.
 - (2) A copy of the Special Management Area Minor Permit issued shall be filed with the Commission and the Office of Planning of the State Department of Business, Economic Development and Tourism.
- (f) The Director shall declare that a Special Management Area Use Permit is required if it is found that the proposed use, activity or operation has a valuation in excess of ~~[\$125,000]~~\$500,000 or may have a substantial adverse effect on the Special Management Area. Should a determination be made that the proposed use, activity or operation requires a Special Management Area Use Permit, the applicant shall submit such application in accordance with Section 9-11.
- (g) The Director shall declare the proposed use, activity or operation exempt from the definition of development if it is found that the proposal falls in any category under Section 9-4(e)(2), and does not have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a substantial adverse effect on the Special Management Area.
- (h) Criteria of Substantial Adverse Effect

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action.

A 'substantial adverse effect' is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as the short or long-term effect of the proposal. The Director should bear in mind that in most instances, the following factors of a proposal, although not limited to same, may constitute a substantial adverse effect on the environment when the proposed use, activity or operation:

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;
- (2) curtails the range of beneficial uses of the environment;
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;

- (4) substantially affects the economic or social welfare and activities of the community, County or State;
- (5) involves substantial secondary impacts, such as population changes and effects on public facilities;
- (6) in itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- (7) substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (8) detrimentally affects air or water quality or ambient noise levels;
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

(i) SMA Short Form Assessment [Application]

The Department may create a SMA short form assessment [application for]to be used by the Department to assess uses that may result in a determination that the proposed use is exempt, i.e., single family residence, minor grubbing, or accessory structures. [The Department may allow the applicant to submit a short form assessment in lieu of a full assessment.] The short form assessment [application] may include, but not be limited to the following information:

- (1) The tax map number for the property;
- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon;
- (3) Description of the proposed action, including the extent of land clearing, if any;
- (4) A statement of valuation; and
- (5) Description of any known historical sites, anchialine ponds, wetland, or sandy beach, and any other pertinent information.

In case of a single family dwelling, a Building Permit application [or application for Plan Approval] may suffice as the [short form assessment] plot plan required under (2).

The Director ~~may~~ ~~shall issue an exemption or~~ require a full SMAA ~~if it is determined through the short form assessment review that further information is needed from the applicant.~~ ~~within ten working days of receipt of the short form assessment application or within a longer period as may be agreed to by the applicant.~~ The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the SMA. ~~[-If the Director does not issue an exemption or require a full SMAA, the applicant shall submit a full SMAA.]~~

9-11 Special Management Area Use Permit Procedures

(a) Compliance with Chapter 343, Hawai‘i Revised Statutes

If the action proposed requires compliance with Chapter 343, Hawai‘i Revised Statutes, an environmental assessment or environmental impact statement shall accompany the filing of a special management area use permit application. The Department, on behalf of the Commission, shall be the accepting authority of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with Chapter 343, Hawai‘i Revised Statutes and this rule. A special management area use permit application shall not be considered complete until such time as the requirements of Chapter 343, Hawai‘i Revised Statutes and Title 11, Chapter 200, Hawai‘i Administrative Rules, if applicable, have been complied with.

(b) Application

An applicant who has received a determination that the proposed use, activity or operation does not conform to the requirements for a minor permit, or who has determined on its own that the proposed use, activity or operation will exceed ~~[\$125,000]~~ \$500,000 in valuation or will have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, shall apply to the Authority through the Director for a Special Management Area Use Permit.

The applicant shall submit the following to the Director:

- (1) The original and twenty copies of the completed application including the following:
 - (A) A tax key description of the property;
 - (B) A plot plan of the property, drawn to scale, with all existing and proposed structures shown thereon and any other information necessary to make a proper determination of the impacts relative to the specific request;

- (C) A written description of the proposed project and statement of the objectives;
- (D) An EA or EIS if required under Chapter 343, HRS, or when required by the Director;
- (E) A written description of the anticipated impacts of the proposed development on the Special Management Area, including but not limited to:
 - (i) Description of environmental setting;
 - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
 - (iii) The probable impact of the proposed action on the environment;
 - (iv) Any probable adverse environmental effects which cannot be avoided;
 - (v) Alternatives to the proposed action;
 - (vi) Mitigating measures proposed to minimize impact; and
 - (vii) Any irreversible and irretrievable commitment of resources.
- (F) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
 - (i) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawai'ian rights are exercised in the petition area;
 - (ii) The extent to which those resources, including traditional and customary native Hawai'ian rights, will be affected or impaired by the proposed action; and
 - (iii) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

- (G) A written statement discussing the proposed development in relationship to the objectives and policies as provided by Chapter 205A, HRS;
 - (H) A statement of the valuation of the proposed use, activity or operation;
 - (I) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a [~~considerable~~] distance of at least one hundred feet from the shoreline;
 - (J) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used; and
 - (K) Any other plans or information required by the Director.
- (2) A plot plan of the property with the information required under Section 9-11 (b) (1) (B) that shall be a minimum of two feet by three feet or of similar dimensions as may be agreed to by the Director.
 - (3) In the case of an applicant whose proposed development has been assessed, any information as to the areas of critical concern delineated by the Director.
 - (4) In the case where a multi-unit residential structure, containing more than ten units is proposed, the Director may require the applicant to submit a scale model or three-dimensional rendering of the proposed development and related improvements.
 - (5) Archaeological Resources (one of the following):
 - (A) An archaeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources – State Historic Preservation Division (DLNR – SHPD) rules.
 - (B) A "no effect" letter from the DLNR – SHPD.
 - (C) A copy of letter written by the applicant to the DLNR – SHPD requesting a "no effect" letter, including supporting

documentation, to which DLNR – SHPD has not responded after 30 days.

- (6) Five hundred dollars filing fee to cover publication and other administration costs.
- (7) A certificate of clearance from the County Director of Finance stating that the real property taxes and all other fees relating to the subject parcel(s) have been paid, and that there are not outstanding delinquencies.

(c) Posting of Signs for Public Notification

- (1) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (A) The nature of the application;
 - (B) The proposed use of the property;
 - (C) The size of the property;
 - (D) The tax map key(s) of the property;
 - (E) That the public may contact the Department for additional information; and
 - (F) The address and telephone number of the Department.
- (2) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (3) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code, as amended.
- (4) The applicant shall file an affidavit with the [planning department] Department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the

applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

(d) Hearings

Upon acceptance of an SMA Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of an SMA Use Permit application by the Director, or within a longer time period as agreed to by the applicant.

Promptly after the Commission fixing a date for the hearing, the applicant shall mail a notice of the hearing setting forth the time, date, and place of the hearing to the owners of properties, lessees, and others with a recorded possessory interest in property within three hundred feet of the perimeter boundary of the affected property and to any other person or agency that has made a written request to the Department for advance notice of the hearing, not less than twenty calendar days prior to the date set for the hearing. Prior to the date of the hearing, the applicant shall file with the Commission, through the Director, an affidavit or other similar proof of mailing of said notice. In addition to said notice and at least twenty calendar days prior to the date of the hearing, the Commission shall give public notice of the time, date, and place of the hearing at least once statewide and once in the County. Any failure to mail or to receive the public notice shall not invalidate the proceedings, provided further that the proceedings conform to the requirements of Chapter 91, HRS, as amended. These aforementioned notice requirements are not required for subsequent hearing dates upon the same application.

At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.

Any such hearing shall, whenever possible, be held jointly and concurrently with other applicable hearings for the proposed development.

The applicant shall submit an additional two hundred fifty dollars processing fee for each hearing continued at the request of the applicant. The applicant shall also notify all owners of properties, lessees, and other recorded possessory interests in the property within three hundred feet of the perimeter boundary of the affected property of the continued hearing.

(e) Grounds for Approval of Special Management Area Use Permits:

The Commission may permit the proposed development only upon finding that:

- (1) The development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest;
- (2) The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS; and
- (3) The development is consistent with the General Plan, Zoning Code and other applicable ordinances.
- (4) The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - (A) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
 - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (C) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

Any development permitted shall be subject to reasonable terms and conditions set by the Authority in accordance with the Special Management Area guidelines as contained in Section 9-7.

(f) Decision and Order

- (1) Within sixty days following the close of the public hearing(s), or a longer time period as agreed to by the applicant, the commission shall either deny or approve the application. The decision, whether to grant or to deny the application, shall require a majority vote of the total membership of the Commission. In the event the Commission fails to render a decision to

approve or deny within the prescribed time limit, the request shall be considered denied.

The applicant may request the Commission to defer action on the application. A majority vote of the total membership of the Commission is required if applicant requests to defer action on the application. In the event the Commission fails to render a decision to defer action within the prescribed time limit, the request shall be considered denied.

- (2) Notice of Decision: Notice of the decision shall be promptly given to the applicant by delivery thereof or by mailing the notice to the applicant's last known address.
- (3) Reconsideration: In the event an application is denied due to the Commission's failure to render a decision within the period prescribed by paragraph F.1. above, the applicant may, within ten calendar days after receipt of notice of the denial, request reconsideration of that decision. Upon such request, the Department shall place the application on the agenda of Commission for its reconsideration at the next meeting. In the event the Commission fails to render a decision by a majority vote of its total membership at the next meeting, the application shall be considered as denied.
- (4) Refiling: Whenever an application for a Special Management Area Use Permit has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the original application, shall be accepted by the Commission through the Director for a period of two years from the effective date of the denial of the original application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a two-year period.
- (5) Appeals:
 - (A) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.
 - (B) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

(g) Amendments to a Special Management Area Use Permit or Conditions

- (1) Application: The applicant may apply to the Commission through the Director for an amendment to the permit or condition(s) imposed by the Special Management Area Use Permit.

In the case of time extensions, the applicant shall set forth in writing:

- (a) the length of time requested; and (b) the reasons for the time extension.

In the case of additions, modifications, and/or deletions of conditions, the applicant shall file the request not less than sixty days prior to the expiration date of the time conditions, setting forth: (a) the condition to be amended; and (b) the reasons thereof.

The applicant shall also deposit with the Department the sum of two hundred fifty dollars to cover publication and other administrative costs, along with the original and twenty copies of the request.

- (2) Notice and Hearing: The hearing and notice procedures shall be the same as under Section 9-11 (c) and (d).
- (3) Decision and Order: The procedures shall be the same as provided for under Section 9-11 (f).

9-12 Artificial Light on Shoreline and Ocean Waters

- (a) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes is prohibited when the light (1) directly illuminates the shoreline and ocean waters; or (2) is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-12 (a) shall not apply to:
 - (1) A outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo, provided that (A) the outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or (B) the outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
 - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-13 Prohibitions

- (a) No special management area use permit or special management area minor permit shall be granted for structures that allow artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purpose when the light:
 - (1) Directly illuminates the shoreline and ocean waters; or
 - (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-13 (a) shall not apply to special management area use permits for structures with:
 - (1) An outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo; provided that
 - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
 - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
 - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-14 Special Management Area Emergency Permits

- (a) A Special Management Area Emergency Permit may be issued for emergency repairs to existing public utilities including but not limited to water, sewer, gas and electric transmission lines and highways, or similar emergencies which may otherwise not be exempt from the Special Management Area permit requirements. Upon finding that an emergency exists and requires immediate action, the Director shall issue a Special Management Area Emergency Permit subject to reasonable terms and conditions including an expiration date. Such permits shall be filed with the Commission in writing.
- (b) In cases of imminent substantial harm to public health, safety, or welfare in the County, including declared states of emergency by the Governor, the Mayor may waive the requirements of obtaining a permit pursuant to these Rules and Regulations.

9-15 Exemptions

This rule shall not apply to proposed developments within the Special Management Area for which final approval, or in the case of subdivisions, for which preliminary subdivision approval, was issued prior to the adoption of this rule, amendments thereto, or to the adoption of the Special Management Area Maps. SMA Use Permit applications filed prior to the adoption of amendments to this rule shall be exempted from any new procedures.

9-16 Revocation

- (a) A Special Management Area Use Permit may be revoked by the Commission in the event that:
 - (1) Any property owner who holds the permit sought to be revoked or at the request of any other person, with the property owner's consent, submits a written statement to the Commission verifying that the development approved under the permit issued has either not been established or has been abandoned.
 - (2) The Director submits a request if:
 - (A) There has been noncompliance with the conditions of the permit;
or
 - (B) The development authorized under the permit is creating a threat to the health or safety of the community.
- (b) Notice and Hearing: The Director shall provide written notice to the property owner and/or to the person who has been issued the permit prior to the Commission taking action to revoke the permit. The Commission shall conduct a hearing within a period of ninety calendar days from the receipt of the request by the applicant or Director. At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.
- (c) Decision and Order: The procedures shall be the same as provided under Section 9-11 (f) of this rule.
- (d) A property owner or other person affected by the revocation of a Special Management Area Use Permit ordered by the Commission, may, within thirty days after the date of the Commission's written order, appeal the Commission's action to the Third Circuit Court as provided by Chapter 91 of the Hawai'i Revised Statutes. An appeal to the Third Circuit Court shall stay the provisions of the Commission's revocation order pending the final decision of the Third Circuit Court.

- (e) The Department is authorized to adopt rules to establish procedures for revocation of a Special Management Area Minor Permit.

9-17 Penalties

- (a) Any person who violates any provision of this rule shall be liable for (1) a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.
- (b) In addition to any other penalties, any person who is violating any provision of this rule shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.
- (c) Any civil fine or other penalty provided under this rule may be imposed by the circuit court or by the Department after an opportunity for a hearing under chapter 91, HRS.

9-18 Complaint and Investigative Procedures

The Department shall adopt rules to establish procedures for investigating complaints and alleged violations.

9-19 Administrative Fines

The Department is authorized to impose administrative fines in accordance with established rules.

9-20 Injunction

Any person violating any provision of this rule may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this rule in a suit brought by the County.

9-21 Hearing Officer

- (a) The Commission may authorize a hearing officer to conduct a hearing for the purpose of taking testimony and to report his/her findings of facts and conclusions of law with his/her recommendation to the Authority on proceedings under the jurisdiction of the Commission as provided by this rule.
- (b) The notice and hearing requirements for hearings conducted by a hearing officer shall be same as provided under Sections 9-11 (c), 9-20 (b), 9-21 (a) (2), or 9-21 (b) (2), as may be applicable.
- (c) Post hearing procedures for hearings conducted by a hearing officer:
 - (1) Recommendation of hearing officer: Upon completion of taking of the evidence the hearing officer shall prepare a report setting forth findings of fact, conclusions of law, and the reasons therefor, and a recommended order and submit the report of the case to the Commission.

- (2) Contents of the record: The record shall include the petition, transcripts of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the persons involved, objections to conduct of the hearing and the report of the hearing officer and all other matters placed into evidence.
 - (3) Within forty-five calendar days after the conclusion of the hearing, the hearing officer shall complete the report and submit it to the Commission and to all persons involved in the proceedings.
- (d) Exceptions to the Hearing Officer's Report and Recommendation:
- (1) Within ten working days after receipt of the report and recommendation by the hearing officer, a person involved in the proceedings may submit to the Authority his exceptions to the report and his reasons in support thereof.
 - (2) The exception shall:
 - (A) Set forth specifically the procedure, fact, law or policy to which exceptions are taken;
 - (B) Identify the part of the hearing officer's report and recommended order to which objections are made; and
 - (C) State specifically the reasons for exceptions to the ruling, finding, conclusion, or recommendation.
- (e) Testimony Before the Commission:
- (1) If a person involved in the proceedings desires to testify before the Authority, a written request with reasons therefor shall accompany the exceptions and the Commission may grant such request.
 - (2) The Commission may on its own motion re-open the hearing to allow the taking of additional testimony and further evidence.
- (f) Commission Action:
- (1) In the event no statement of exception is filed, the Commission may proceed to reverse, modify or adopt the recommendation of the hearing officer.
 - (2) Upon the submittal of exceptions and the taking of further evidence, if any, Commission shall render its decision pursuant to Rule 9.11 (e).

9-22 Petition for the Adoption, Amendment or Repeal of Rule 9 Special Management Area Rule of the County of Hawai'i

(a) Petition

Any person may petition the Commission through the Director requesting the adoption, amendment or repeal of any provision of this rule.

The petitioner shall be responsible for submitting the following to the Director:

- (1) The original and twenty copies of the completed petition including:
 - (A) A statement of the nature of the petitioner's interest.
 - (B) A draft of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
 - (C) An explicit statement of the reasons in support of the proposed rule, amendment or repeal. Said reasons shall include a discussion of the relationship of the proposed change with Chapter 205A, HRS, Relating to Coastal Zone Management, and other applicable State and County Ordinances or regulations including the General Plan.
- (2) Five hundred dollars filing fee to cover publication and other administrative costs.

(b) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11 (c), provided further that the Commission shall conduct a public hearing within a period of ninety calendar days from the receipt of a properly filed petition.

(c) Decision and Order

The procedures shall be the same as under Section 9-11 (f).

9-23 Amendment of Special Management Area (SMA) Maps

(a) Amendments initiated by the Director:

(1) Initiation:

- (A) The Director may at any time initiate amendments to the Special Management Area Boundaries.
- (B) The Commission, by a two-thirds (2/3) vote of its total membership, may direct the Director to initiate amendments to the Special Management Area boundaries.
- (C) The Director shall give notice of his intent to amend the Special Management Area boundaries to the Commission, the general public and the State Office of Planning, stating the initiation date and estimated completion date of review. The Director, upon completion of his review, shall submit the proposed amendments to the Commission.

(2) Notice and Hearing:

The notice and hearing procedures shall be the same as stipulated under Section 9-11 (c) of this rule, provided further that the Commission shall conduct a hearing within a period of sixty calendar days from the submittal of the proposed amendments by the Director.

(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Commission may amend the Special Management Area boundaries only upon finding that the amendments will further the objectives and policies as provided by Chapter 205A, HRS, and will be consistent with the General Plan and other applicable ordinances.

(4) Decision and Order:

The procedures shall be the same as under Section 9-11 (f).

(b) Special Management Area Boundary Amendments Initiated by the General Public:

(1) Application:

Any person may apply to the Commission through the Director requesting the amendment of the Special Management Area boundaries.

The applicant shall submit the following to the Department:

(A) The original and twenty copies of the completed application including the following:

(i) A statement of the nature of the applicant's interest.

(ii) A description of the properties involved in sufficient detail to determine the precise location.

(iii) An explicit statement of the reasons in support of the request including a discussion of how the amendment will further the Special Management Area objectives and policies as well as be consistent with the General Plan and other applicable ordinances.

(iv) A statement discussing the proposed use of the parcel and any other information necessary to render a proper decision relating to the specific request.

(B) Five hundred dollars filing fee to cover publication and other administrative costs.

(2) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11 (c) and (d).

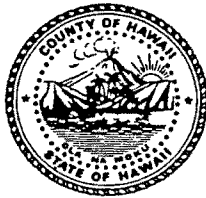
(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Grounds for approval of Special Management Area boundary amendments shall be the same as provided for in Section 9-21 (a) (3).

(4) Decision and Order:

The procedures shall be the same as provided for in Section 9-11 (f).

STEWART MAEDA
County Clerk



JON HENRICKS
Deputy County Clerk

County of Hawai'i
Office of the County Clerk
25 Aupuni Street, Suite 1402 • Hilo, Hawai'i 96720
(808) 961-8255 • Fax (808) 961-8912

2017 NOV 28 PM 12 31
PLANNING DEPARTMENT
COUNTY OF HAWAII

November 28, 2017

The Honorable Shan S. Tsutsui
Lieutenant Governor
Executive Chambers
State of Hawai'i
State Capitol Building
Honolulu, Hawai'i 96813

Dear Lt. Governor Tsutsui:

Pursuant to HRS 91-4, enclosed you will find one original and one copy of amended Administrative Rules and Regulations (*Rule 9 - Special Management Area*), Planning Department, County of Hawai'i, State of Hawai'i.

We trust that this submission is in order.

Sincerely,

Stewart Maeda
County Clerk
County of Hawai'i

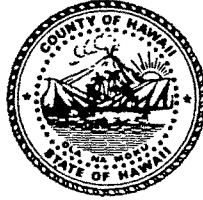
SM/dt

Enclosures

xc: Ombudsman
State Law Library
Corporation Counsel
✓ Planning Department

115186

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

November 24, 2017

Mr. Stewart Maeda, County Clerk
County of Hawai'i
25 Aupuni Street
Hilo, Hawai'i 96720

Dear Mr. Maeda:

**SUBJECT: County of Hawai'i Planning Commission
Rules of Practice and Procedure
Amendment to Rule 9 Regarding the Special Management Area (SMA)**

2017 NOV 24 AM 11:04
COUNTY CLERK
COUNTY OF HAWAII

In accordance with Hawai'i Revised Statutes, Section 91-4, enclosed for filing are three (3) originals and four (4) copies of the amendments to the County of Hawai'i Planning Commission Rules of Practice and Procedure to Rule 9, which was approved and adopted by the Windward and Leeward Planning Commissions on October 30, 2017.

Should you have any questions regarding the above, please contact Jeff Darrow of this department at 961-8158.

Sincerely,

FN MICHAEL YEE
Planning Director

P:\wp60\PC\PCC2017-4\PD\lrtoClerkamendRule9.doc
Enclosures – 3 originals + 4 copies PC Rule 9

Original

RULE 9. SPECIAL MANAGEMENT AREA

9-1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai'i Revised Statutes, the rule hereinafter contained is hereby established and shall apply to all lands within the Special Management Area of the County of Hawai'i.

9-2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

9-3 Title

This rule shall be known as the "Special Management Area Rule of the County of Hawai'i."

9-4 Definitions

For the purpose of this rule, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) "Assessment" means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area Use Permit is required.
- (b) "Public Works Director" means the Director of the Department of Public Works of the County of Hawai'i.
- (c) "Crops" means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use including but not limited to the raising of livestock.
- (d) "Cultural" pertains to traditional and customary practices and usage of resources to fulfill responsibilities and rights possessed and exercised by ahupuaa tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.
- (e) "Development" means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:
 - (1) "Development" includes the following:
 - (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;

- (B) Grading, removing, dredging, mining, or extraction of any materials;
 - (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (D) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
 - (E) Construction, reconstruction, demolition, or alteration of the size of any structure.
- (2) "Development" does not include the following uses, activities or operations:
- (A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development. Floor area shall be the total area of all floors of a building(s) associated with the single-family residence, including a basement and accessory structures, measured along the exterior walls of such building(s). The floor area of a building(s), or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above;
 - (B) Repair or maintenance of roads and highways within existing rights-of-way;
 - (C) Routine maintenance dredging of existing streams, channels, and drainage ways;
 - (D) Repair and maintenance of utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
 - (E) Zoning variances, except for height, density, parking, and shoreline setback;
 - (F) Repair, maintenance, or interior alterations to existing structures or relating to existing uses;
 - (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan;
 - (H) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
 - (I) Transfer of title of land;

- (J) Creation or termination of easements, covenants, or other rights in structures or land;
 - (K) Subdivision of land into lots greater than twenty acres in size;
 - (L) The amendment of the General Plan, State Land Use Boundary amendments and changes of zone;
 - (M) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
 - (N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - (O) Structural and non-structural improvements to existing single-family residences, where otherwise permissible; and
 - (P) Non-structural improvements to existing commercial structures.
 - (Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.
 - (R) Plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the Division of Boating and Ocean Recreation of the State Department of Land and Natural Resources.
- (3) Any proposed use, activity, or operation listed in Section 9-4(e)(2) shall be deemed to be "Development" until the Director has determined it to be exempted from the definition of "development."
 - (4) Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as "development" for the purpose of this rule.
- (f) "EIS" means an informational document prepared in compliance with Chapter 343, HRS, and the Hawai'i Administrative Rules, Title II, Chapter 200 (Environmental Impact Statement Rules). An EIS discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

- (g) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the seawater is measurably diluted with fresh water derived from land drainage.
- (h) "Native Hawaiian Rights" means those rights defined in and protected under HRS 1-1, HRS 7-1, HRS 174C-101, Article XII, Section 7 of the Hawai'i State Constitution, and in rulings of Hawai'i case law."
- (i) "Owner" means all equitable and legal holders or lessees of real property. Lessees shall present certification of approval from the legal owner.
- (j) "Person" means and includes any individual, organization, partnership, or corporation, including any utility and any agency of government.
- (k) "Petitioner" means and includes any person who seeks permission or authorization which the Commission may grant under this rule.
- (l) "Shoreline" means the upper reaches of the wash of waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.
- (m) "Shoreline Survey" means the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a registered land surveyor in the State of Hawai'i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chairman of the Board of Land and Natural Resources.
- (n) "Single-Family Residence" means a detached building designed for and/or used as the complete facility for cooking, sleeping and living area of a single family only and occupied by no more than one family. Single family residences may include uses or structures normally considered accessory to the single family facilities provided that any such uses or structures are situated on the same lot or building site and are in compliance with all requirements of any county or state regulation, statute, or ordinance. A single family shall include all persons living in a dwelling related by blood, marriage or by adoption or a group comprised of not more than five persons not related by blood, marriage or by adoption.
- (o) "Special Management Area" means the land extending inland from the shoreline as delineated on the maps filed with the Commission as of June 8, 1977, or as amended pursuant to Section 9-21.
- (p) "Special Management Area Emergency Permit" means an action by the Director authorizing development in cases of emergency requiring immediate action to prevent substantial harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.

- (q) “Special Management Area Minor Permit” means an action by the Director authorizing development, the valuation of which is not in excess of \$500,000 and which has no cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (r) “Special Management Area Use Permit” means an action by the Commission authorizing development, the valuation of which exceeds \$500,000 or which may have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (s) “Structure” means and includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- (t) “Use” means any purpose for which a structure or a tract of land is designed, arranged, intended, maintained or occupied or any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.
- (u) “Valuation” shall be determined by the Director and means the estimated cost to replace the structure, in kind, based on current replacement costs, or in the case of other developments, as defined in 9-4(e)(1), the fair market value of the development.
- (v) “Vegetation Growth” means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.
- (w) “Artificial light” or “artificial lighting” means the light emanating from any fixed human-made device.
- (x) “Directly illuminate” means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.
- (y) “Ocean waters” means all waters seaward of the shoreline within the jurisdiction of the State.

9-5 Special Management Area

Special Management Area of the County shall be as delineated on such maps filed with the Authority as of June 8, 1977, or as may be amended pursuant to Section 9-21, and shall be the official Special Management Area to be administered and enforced under this rule.

9-6 Objectives and Policies of Chapter 205A, HRS

- (a) The objectives and policies of the coastal zone management program shall be those set forth in Section 205A-2, HRS, as amended.
- (b) The Commission shall implement these objectives and policies, as appropriate.

9-7 Special Management Area Guidelines

The Special Management Area guidelines set forth in Section 205A-26, HRS, as amended, shall be used by the Commission, as appropriate, for the review of developments proposed in the Special Management Area.

9-8 Permits Required for Development

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.
- (c) Special Management Area Minor, Use or Emergency Permits or exemptions validly issued by the Department or the Commission, subsequent to any amendment to Chapter 205A, Hawai'i Revised Statutes but preceding any supportive amendment to this rule shall continue to be considered valid.

9-9 Authority of the Department in the Special Management Area

All development within the Special Management Area shall be administered through the Department under this rule pursuant to the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS.

To improve the efficiency of the Commission's review, approval and permitting processes granted upon it by Chapter 205A-22, Hawai'i Revised Statutes and in accordance with Rule 9 herein, the Commission hereby delegates to the Director the authority to process assessments, determinations and conditions regarding exemptions, issue and enforce Special Management Area Minor Permits and Special Management Area Emergency Permits, and to administer, interpret, and enforce terms, scope and conditions set forth in Special Management Area Use Permits issued by the Commission.

9-10 Assessment

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed \$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.
- (b) For proposed uses, activities or operations that are subject to an assessment, the applicant shall submit to the Department a Special Management Area Assessment (SMAA) on a form prepared by the Department. The review and acceptance of the assessment application shall follow the procedures pursuant to Section 25-2-3 (Review and acceptance of applications) in Chapter 25, Hawai'i County Code. The information on the SMAA form shall include, but not be limited to, the following:
 - (1) The tax map number for the property.

- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon and any other information necessary to a proper determination relative to the specific request.
- (3) A written description of the proposed project and a statement of objectives.
- (4) An Environmental Assessment (EA) or Environmental Impact Statement (EIS) if required under Chapter 343, HRS, or when required by the Director.
- (5) A written description of the anticipated impacts of the proposed uses, activities or operations on the Special Management Area including but not limited to:
 - (A) Description of environmental setting;
 - (B) The relationship of the proposed action to land use plans, policies, and control of the affected area;
 - (C) The probable impact of the proposed action on the environment;
 - (D) Any probable adverse environmental effects which cannot be avoided;
 - (E) Alternatives to the proposed action;
 - (F) Mitigating measures proposed to minimize impact; and
 - (G) Any irreversible and irretrievable commitment of resources.
- (6) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
 - (A) The identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area;
 - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (C) The feasible action, if any, to be taken to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (7) A written statement discussing the proposed use, activity or operation in relation to the objectives and policies as provided by Chapter 205A, HRS.
- (8) A statement of the valuation of the proposed use, activity or operation.

- (9) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline.
- (10) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used.
- (11) Any other plans or information required by the Director.

An EIS that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.

- (12) A fifty dollar (\$50) filing fee.
- (c) The Director shall assess the proposed use, activity or operation upon the applicant's compliance with Section 9-10B based on the following criteria:
 - (1) The valuation of the proposed use, activity or operation.
 - (2) The potential effects and significance of each specific circumstance of the use, activity or operation, according to the criteria of substantial adverse effect established by Section 9-10H.
 - (d) The Director, within sixty calendar days after the receipt of all filing requirements or within a longer period as may be agreed to by the applicant, shall notify the applicant in writing that:

The proposed use, activity or operation does not constitute a development or is exempt from the definition of development; or

A Special Management Area Minor Permit is being issued; or

A Special Management Area (Major) Use Permit is required.

If the proposed use, activity, or operation is less than \$500,000 in value and the Director fails to act within the sixty calendar day period or within such longer period as may have been agreed to by the applicant, the proposed use, activity or operation shall be forwarded to the Commission for its consideration. The notice and hearing procedures and action shall be the same as under Section 9-11 (c) through 9-11 (f) .

- (e) Where it is found that the proposed use, activity or operation is not in excess of \$500,000 in valuation; and will not have a cumulative impact, or a substantial adverse effect on the Special Management Area, and after review by the Public Works Director for compliance with Chapter 27, Flood Control, of the Hawai'i County Code, the Director shall issue a Special Management Area Minor Permit.

- (1) The issuance of such minor permit shall be subject to any reasonable terms or conditions.
 - (2) A copy of the Special Management Area Minor Permit issued shall be filed with the Commission and the Office of Planning of the State Department of Business, Economic Development and Tourism.
- (f) The Director shall declare that a Special Management Area Use Permit is required if it is found that the proposed use, activity or operation has a valuation in excess of \$500,000 or may have a substantial adverse effect on the Special Management Area. Should a determination be made that the proposed use, activity or operation requires a Special Management Area Use Permit, the applicant shall submit such application in accordance with Section 9-11.
- (g) The Director shall declare the proposed use, activity or operation exempt from the definition of development if it is found that the proposal falls in any category under Section 9-4(e)(2), and does not have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a substantial adverse effect on the Special Management Area.
- (h) Criteria of Substantial Adverse Effect

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action.

A 'substantial adverse effect' is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as the short or long-term effect of the proposal. The Director should bear in mind that in most instances, the following factors of a proposal, although not limited to same, may constitute a substantial adverse effect on the environment when the proposed use, activity or operation:

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;
- (2) curtails the range of beneficial uses of the environment;
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;
- (4) substantially affects the economic or social welfare and activities of the community, County or State;

- (5) involves substantial secondary impacts, such as population changes and effects on public facilities;
- (6) in itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- (7) substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (8) detrimentally affects air or water quality or ambient noise levels;
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

(i) SMA Short Form Assessment

The Department may create a SMA short form assessment to be used by the Department to assess uses that may result in a determination that the proposed use is exempt, i.e., single family residence, minor grubbing, or accessory structures. The short form assessment may include, but not be limited to the following information:

- (1) The tax map number for the property;
- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon;
- (3) Description of the proposed action, including the extent of land clearing, if any;
- (4) Description of any known historical sites, anchialine ponds, wetland, or sandy beach, and any other pertinent information.

In case of a single family dwelling, a Building Permit application may suffice as the plot plan required under (2).

The Director may require a full SMAA if it is determined through the short form assessment review that further information is needed from the applicant. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the SMA.

9-11 Special Management Area Use Permit Procedures

(a) Compliance with Chapter 343, Hawai'i Revised Statutes

If the action proposed requires compliance with Chapter 343, Hawai'i Revised Statutes, an environmental assessment or environmental impact statement shall accompany the filing of a special management area use permit application. The Department, on behalf of the Commission, shall be the accepting authority of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with Chapter 343, Hawai'i Revised Statutes and this rule. A special management area use permit application shall not be considered complete until such time as the requirements of Chapter 343, Hawai'i Revised Statutes and Title 11, Chapter 200, Hawai'i Administrative Rules, if applicable, have been complied with.

(b) Application

An applicant who has received a determination that the proposed use, activity or operation does not conform to the requirements for a minor permit, or who has determined on its own that the proposed use, activity or operation will exceed \$500,000 in valuation or will have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, shall apply to the Authority through the Director for a Special Management Area Use Permit.

The applicant shall submit the following to the Director:

- (1) The original and twenty copies of the completed application including the following:
 - (A) A tax key description of the property;
 - (B) A plot plan of the property, drawn to scale, with all existing and proposed structures shown thereon and any other information necessary to make a proper determination of the impacts relative to the specific request;
 - (C) A written description of the proposed project and statement of the objectives;
 - (D) An EA or EIS if required under Chapter 343, HRS, or when required by the Director;
 - (E) A written description of the anticipated impacts of the proposed development on the Special Management Area, including but not limited to:

- (i) Description of environmental setting;
 - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
 - (iii) The probable impact of the proposed action on the environment;
 - (iv) Any probable adverse environmental effects which cannot be avoided;
 - (v) Alternatives to the proposed action;
 - (vi) Mitigating measures proposed to minimize impact; and
 - (vii) Any irreversible and irretrievable commitment of resources.
- (F) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
- (i) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawai'ian rights are exercised in the petition area;
 - (ii) The extent to which those resources, including traditional and customary native Hawai'ian rights, will be affected or impaired by the proposed action; and
 - (iii) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (G) A written statement discussing the proposed development in relationship to the objectives and policies as provided by Chapter 205A, HRS;
- (H) A statement of the valuation of the proposed use, activity or operation;
- (I) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and

unmistakably located on a shoreline parcel at a considerable distance from the shoreline;

- (J) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used; and
 - (K) Any other plans or information required by the Director.
- (2) A plot plan of the property with the information required under Section 9-11 (b) (1) (B) that shall be a minimum of two feet by three feet or of similar dimensions as may be agreed to by the Director.
 - (3) In the case of an applicant whose proposed development has been assessed, any information as to the areas of critical concern delineated by the Director.
 - (4) In the case where a multi-unit residential structure, containing more than ten units is proposed, the Director may require the applicant to submit a scale model or three-dimensional rendering of the proposed development and related improvements.
 - (5) Archaeological Resources (one of the following):
 - (A) An archaeological inventory report containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources – State Historic Preservation Division (DLNR – SHPD) rules.
 - (B) A "no effect" letter from the DLNR – SHPD.
 - (C) A copy of letter written by the applicant to the DLNR – SHPD requesting a "no effect" letter, including supporting documentation, to which DLNR – SHPD has not responded after 30 days.
 - (6) Five hundred dollars filing fee to cover publication and other administration costs.
 - (7) A certificate of clearance from the County Director of Finance stating that the real property taxes and all other fees relating to the subject parcel(s) have been paid, and that there are not outstanding delinquencies.

(c) Posting of Signs for Public Notification

- (1) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (A) The nature of the application;
 - (B) The proposed use of the property;
 - (C) The size of the property;
 - (D) The tax map key(s) of the property;
 - (E) That the public may contact the Department for additional information; and
 - (F) The address and telephone number of the Department.
- (2) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (3) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code, as amended.
- (4) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

(d) Hearings

Upon acceptance of an SMA Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of an SMA Use Permit

application by the Director, or within a longer time period as agreed to by the applicant.

Promptly after the Commission fixing a date for the hearing, the applicant shall mail a notice of the hearing setting forth the time, date, and place of the hearing to the owners of properties, lessees, and others with a recorded possessory interest in property within three hundred feet of the perimeter boundary of the affected property and to any other person or agency that has made a written request to the Department for advance notice of the hearing, not less than twenty calendar days prior to the date set for the hearing. Prior to the date of the hearing, the applicant shall file with the Commission, through the Director, an affidavit or other similar proof of mailing of said notice. In addition to said notice and at least twenty calendar days prior to the date of the hearing, the Commission shall give public notice of the time, date, and place of the hearing at least once statewide and once in the County. Any failure to mail or to receive the public notice shall not invalidate the proceedings, provided further that the proceedings conform to the requirements of Chapter 91, HRS, as amended. These aforementioned notice requirements are not required for subsequent hearing dates upon the same application.

At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.

Any such hearing shall, whenever possible, be held jointly and concurrently with other applicable hearings for the proposed development.

The applicant shall submit an additional two hundred fifty dollars processing fee for each hearing continued at the request of the applicant. The applicant shall also notify all owners of properties, lessees, and other recorded possessory interests in the property within three hundred feet of the perimeter boundary of the affected property of the continued hearing.

(e) Grounds for Approval of Special Management Area Use Permits:

The Commission may permit the proposed development only upon finding that:

- (1) The development will not have any substantial adverse environmental or ecological effect except as such adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest;

- (2) The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS; and
- (3) The development is consistent with the General Plan, Zoning Code and other applicable ordinances.
- (4) The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - (A) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
 - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (C) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

Any development permitted shall be subject to reasonable terms and conditions set by the Authority in accordance with the Special Management Area guidelines as contained in Section 9-7.

(f) Decision and Order

- (1) Within sixty days following the close of the public hearing(s), or a longer time period as agreed to by the applicant, the commission shall either deny or approve the application. The decision, whether to grant or to deny the application, shall require a majority vote of the total membership of the Commission. In the event the Commission fails to render a decision to approve or deny within the prescribed time limit, the request shall be considered denied.

The applicant may request the Commission to defer action on the application. A majority vote of the total membership of the Commission is required if applicant requests to defer action on the application. In the event the Commission fails to render a decision to defer action within the prescribed time limit, the request shall be considered denied.

- (2) Notice of Decision: Notice of the decision shall be promptly given to the applicant by delivery thereof or by mailing the notice to the applicant's last known address.
- (3) Reconsideration: In the event an application is denied due to the Commission's failure to render a decision within the period prescribed by paragraph F.1. above, the applicant may, within ten calendar days after receipt of notice of the denial, request reconsideration of that decision. Upon such request, the Department shall place the application on the agenda of Commission for its reconsideration at the next meeting. In the event the Commission fails to render a decision by a majority vote of its total membership at the next meeting, the application shall be considered as denied.
- (4) Refiling: Whenever an application for a Special Management Area Use Permit has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the original application, shall be accepted by the Commission through the Director for a period of two years from the effective date of the denial of the original application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a two-year period.
- (5) Appeals:
 - (A) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.
 - (B) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

(g) Amendments to a Special Management Area Use Permit or Conditions

- (1) Application: The applicant may apply to the Commission through the Director for an amendment to the permit or condition(s) imposed by the Special Management Area Use Permit.

In the case of time extensions, the applicant shall set forth in writing:

- (a) the length of time requested; and (b) the reasons for the time extension.

In the case of additions, modifications, and/or deletions of conditions, the applicant shall file the request not less than sixty days prior to the

expiration date of the time conditions, setting forth: (a) the condition to be amended; and (b) the reasons thereof.

The applicant shall also deposit with the Department the sum of two hundred fifty dollars to cover publication and other administrative costs, along with the original and twenty copies of the request.

- (2) Notice and Hearing: The hearing and notice procedures shall be the same as under Section 9-11 (c) and (d).
- (3) Decision and Order: The procedures shall be the same as provided for under Section 9-11 (f).

9-12 Artificial Light on Shoreline and Ocean Waters

- (a) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes is prohibited when the light (1) directly illuminates the shoreline and ocean waters; or (2) is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-12 (a) shall not apply to:
 - (1) A outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo, provided that (A) the outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or (B) the outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
 - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-13 Prohibitions

- (a) No special management area use permit or special management area minor permit shall be granted for structures that allow artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purpose when the light:
 - (1) Directly illuminates the shoreline and ocean waters; or
 - (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-13 (a) shall not apply to special management area use permits for structures with:

- (1) An outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo; provided that
 - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
 - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
- (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-14 Special Management Area Emergency Permits

- (a) A Special Management Area Emergency Permit may be issued for emergency repairs to existing public utilities including but not limited to water, sewer, gas and electric transmission lines and highways, or similar emergencies which may otherwise not be exempt from the Special Management Area permit requirements. Upon finding that an emergency exists and requires immediate action, the Director shall issue a Special Management Area Emergency Permit subject to reasonable terms and conditions including an expiration date. Such permits shall be filed with the Commission in writing.
- (b) In cases of imminent substantial harm to public health, safety, or welfare in the County, including declared states of emergency by the Governor, the Mayor may waive the requirements of obtaining a permit pursuant to these Rules and Regulations.

9-15 Exemptions

This rule shall not apply to proposed developments within the Special Management Area for which final approval, or in the case of subdivisions, for which preliminary subdivision approval, was issued prior to the adoption of this rule, amendments thereto, or to the adoption of the Special Management Area Maps. SMA Use Permit applications filed prior to the adoption of amendments to this rule shall be exempted from any new procedures.

9-16 Revocation

- (a) A Special Management Area Use Permit may be revoked by the Commission in the event that:
 - (1) Any property owner who holds the permit sought to be revoked or at the request of any other person, with the property owner's consent, submits a written statement to the Commission verifying that the development approved under the permit issued has either not been established or has been abandoned.

- (2) The Director submits a request if:
 - (A) There has been noncompliance with the conditions of the permit;
or
 - (B) The development authorized under the permit is creating a threat to the health or safety of the community.

- (b) Notice and Hearing: The Director shall provide written notice to the property owner and/or to the person who has been issued the permit prior to the Commission taking action to revoke the permit. The Commission shall conduct a hearing within a period of ninety calendar days from the receipt of the request by the applicant or Director. At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.

- (c) Decision and Order: The procedures shall be the same as provided under Section 9-11 (f) of this rule.

- (d) A property owner or other person affected by the revocation of a Special Management Area Use Permit ordered by the Commission, may, within thirty days after the date of the Commission's written order, appeal the Commission's action to the Third Circuit Court as provided by Chapter 91 of the Hawai'i Revised Statutes. An appeal to the Third Circuit Court shall stay the provisions of the Commission's revocation order pending the final decision of the Third Circuit Court.

- (e) The Department is authorized to adopt rules to establish procedures for revocation of a Special Management Area Minor Permit.

9-17 Penalties

- (a) Any person who violates any provision of this rule shall be liable for (1) a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.

- (b) In addition to any other penalties, any person who is violating any provision of this rule shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.

- (c) Any civil fine or other penalty provided under this rule may be imposed by the circuit court or by the Department after an opportunity for a hearing under chapter 91, HRS.

9-18 Complaint and Investigative Procedures

The Department shall adopt rules to establish procedures for investigating complaints and alleged violations.

9-19 Administrative Fines

The Department is authorized to impose administrative fines in accordance with established rules.

9-20 Injunction

Any person violating any provision of this rule may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to effectuate the purposes of this rule in a suit brought by the County.

9-21 Hearing Officer

- (a) The Commission may authorize a hearing officer to conduct a hearing for the purpose of taking testimony and to report his/her findings of facts and conclusions of law with his/her recommendation to the Authority on proceedings under the jurisdiction of the Commission as provided by this rule.
- (b) The notice and hearing requirements for hearings conducted by a hearing officer shall be same as provided under Sections 9-11 (c), 9-20 (b), 9-21 (a) (2), or 9-21 (b) (2), as may be applicable.
- (c) Post hearing procedures for hearings conducted by a hearing officer:
 - (1) Recommendation of hearing officer: Upon completion of taking of the evidence the hearing officer shall prepare a report setting forth findings of fact, conclusions of law, and the reasons therefor, and a recommended order and submit the report of the case to the Commission.
 - (2) Contents of the record: The record shall include the petition, transcripts of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the persons involved, objections to conduct of the hearing and the report of the hearing officer and all other matters placed into evidence.
 - (3) Within forty-five calendar days after the conclusion of the hearing, the hearing officer shall complete the report and submit it to the Commission and to all persons involved in the proceedings.
- (d) Exceptions to the Hearing Officer's Report and Recommendation:
 - (1) Within ten working days after receipt of the report and recommendation by the hearing officer, a person involved in the proceedings may submit to the Authority his exceptions to the report and his reasons in support thereof.
 - (2) The exception shall:
 - (A) Set forth specifically the procedure, fact, law or policy to which exceptions are taken;
 - (B) Identify the part of the hearing officer's report and recommended order to which objections are made; and

(C) State specifically the reasons for exceptions to the ruling, finding, conclusion, or recommendation.

(e) Testimony Before the Commission:

- (1) If a person involved in the proceedings desires to testify before the Authority, a written request with reasons therefor shall accompany the exceptions and the Commission may grant such request.
- (2) The Commission may on its own motion re-open the hearing to allow the taking of additional testimony and further evidence.

(f) Commission Action:

- (1) In the event no statement of exception is filed, the Commission may proceed to reverse, modify or adopt the recommendation of the hearing officer.
- (2) Upon the submittal of exceptions and the taking of further evidence, if any, Commission shall render its decision pursuant to Rule 9.11 (e).

9-22 Petition for the Adoption, Amendment or Repeal of Rule 9 Special Management Area Rule of the County of Hawai'i

(a) Petition

Any person may petition the Commission through the Director requesting the adoption, amendment or repeal of any provision of this rule.

The petitioner shall be responsible for submitting the following to the Director:

- (1) The original and twenty copies of the completed petition including:
 - (A) A statement of the nature of the petitioner's interest.
 - (B) A draft of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
 - (C) An explicit statement of the reasons in support of the proposed rule, amendment or repeal. Said reasons shall include a discussion of the relationship of the proposed change with Chapter 205A, HRS, Relating to Coastal Zone Management, and other applicable State and County Ordinances or regulations including the General Plan.
- (2) Five hundred dollars filing fee to cover publication and other administrative costs.

(b) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11 (c), provided further that the Commission shall conduct a public hearing

within a period of ninety calendar days from the receipt of a properly filed petition.

(c) Decision and Order

The procedures shall be the same as under Section 9-11 (f).

9-23 Amendment of Special Management Area (SMA) Maps

(a) Amendments initiated by the Director:

(1) Initiation:

- (A) The Director may at any time initiate amendments to the Special Management Area Boundaries.
- (B) The Commission, by a two-thirds (2/3) vote of its total membership, may direct the Director to initiate amendments to the Special Management Area boundaries.
- (C) The Director shall give notice of his intent to amend the Special Management Area boundaries to the Commission, the general public and the State Office of Planning, stating the initiation date and estimated completion date of review. The Director, upon completion of his review, shall submit the proposed amendments to the Commission.

(2) Notice and Hearing:

The notice and hearing procedures shall be the same as stipulated under Section 9-11 (c) of this rule, provided further that the Commission shall conduct a hearing within a period of sixty calendar days from the submittal of the proposed amendments by the Director.

(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Commission may amend the Special Management Area boundaries only upon finding that the amendments will further the objectives and policies as provided by Chapter 205A, HRS, and will be consistent with the General Plan and other applicable ordinances.

(4) Decision and Order:

The procedures shall be the same as under Section 9-11 (f).

(b) Special Management Area Boundary Amendments Initiated by the General Public:

(1) Application:

Any person may apply to the Commission through the Director requesting the amendment of the Special Management Area boundaries.

The applicant shall submit the following to the Department:

- (A) The original and twenty copies of the completed application including the following:
 - (i) A statement of the nature of the applicant's interest.
 - (ii) A description of the properties involved in sufficient detail to determine the precise location.
 - (iii) An explicit statement of the reasons in support of the request including a discussion of how the amendment will further the Special Management Area objectives and policies as well as be consistent with the General Plan and other applicable ordinances.
 - (iv) A statement discussing the proposed use of the parcel and any other information necessary to render a proper decision relating to the specific request.
- (B) Five hundred dollars filing fee to cover publication and other administrative costs.

(2) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11 (c) and (d).

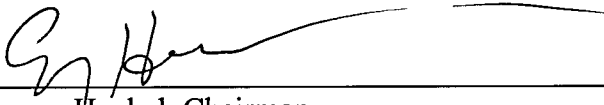
(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Grounds for approval of Special Management Area boundary amendments shall be the same as provided for in Section 9-21 (a) (3).

(4) Decision and Order:

The procedures shall be the same as provided for in Section 9-11 (f).

WINDWARD PLANNING COMMISSION

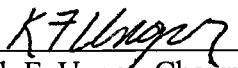


Gregory Henkel, Chairman

11/22/17

Date

LEEWARD PLANNING COMMISSION



Keith F. Ungef, Chairman

11/9/17

Date

Notice of Public Hearing:


Hawai'i Tribune-Herald: September 29, 2017
West Hawai'i Today: September 29, 2017

Date and Place of Hearing: October 30, 2017

West Hawai'i Civic Center, Council Chambers, Building A
74-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai'i


Hawai'i County Building, Council Chambers
25 Aupuni Street, Hilo Hawai'i

APPROVED:



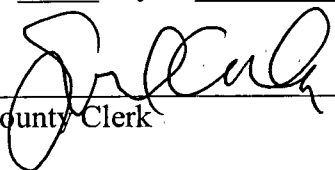
MAYOR, County of Hawai'i **Managing Director**
Date: 11/22/17

APPROVED AS TO FORM:



Deputy Corporation Counsel
Date: 11/22/17

I hereby certify that the foregoing amendments and revisions to the Hawai'i County Planning Commission Rules of Practice and Procedure was received and filed in my office this 24th day of November, 2017.



County Clerk

Modified

29) HAR §§ 13-60.4-2, 13-60.4-3, and 13-60.4-5

Relating to: **West Hawai'i Regional Fishery Management Area, Hawai'i**

Amendments to Chapter 13-60.4
Hawaii Administrative Rules

May 27, 2016

1. Section 13-60.4-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore, seaward to the limit of the State's police power and management authority.

(b) The following marine reserves, fish replenishment areas, and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in the exhibit entitled ["Map of Fish Replenishment Area and Netting Restricted Area Boundaries", dated 9/21/11,] "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

(1) Ka'ūpūlehu marine reserve, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);

[(1)](2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;

[(2)](3) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);

- [(3) Ka'ūpūlehu fish replenishment area, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);]
- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
- (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
- (6) Red Hill fish replenishment area, identified on shore to the north at Nenu Point and to the south by Keawakāheka Point;
- (7) Nāpo'opo'o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu'uhonua o Hōnaunau (Ki'ilae);
- (8) Ho'okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka'ū Loa Point;
- (9) Ka'ohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka'ū Loa Point, and to the south by signage north of 'Au'au Point;
- (10) Miloli'i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki'o Point;
- (11) Kikaua Point-Mākole'a Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and

to the south by Mākole‘ā Point (near Kekaha Kai State Park);

- (12) Nenu Point-Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;
- (13) Hanamalo Point-Kanewa‘a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu‘a Bay, and to the south by Kanewa‘a Point, South Kona; and
- (14) Kanonone-Kalipoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalipoa, Ka‘ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude coordinates, as provided in the tables located at the end of this chapter entitled ["Table of Reference Coordinates to Fish Replenishment Area Boundaries", dated 9/21/11,] "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and ["Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 9/21/11,] "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12, and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary

straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area. The seaward boundary of each area shall be determined by an imaginary line drawn along the one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai'i regional fishery management area:

- (1) Lapakahi marine life conservation district, as described in chapter 13-33;
- (2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
- (3) Wailea Bay marine life conservation district, as described in chapter 13-35;
- (4) Old Kona Airport marine life conservation district, as described in chapter 13-37;
- (5) Kealakekua Bay marine life conservation district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
- (7) Kīholo Bay fisheries management area, as described in chapter 13-60;
- (8) Kailua Bay fisheries management area, as described in chapter 13-52;
- (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
- (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by law or rules adopted by the department of land and natural resource or any other department of the State." [Eff 12/26/13, am] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

2. Section 13-60.4-3, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Deploy" means to place the specified gear in the water, in whole or in part."

3. Section 13-60.4-3, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life."

4. Section 13-60.4-3, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to deploy and retrieve the line, and the use of a landing net to land hooked fish."

5. Section 13-60.4-3, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Kona crab net" means a mesh net encircled by a rigid frame no more than three feet in length in any direction."

6. Section 13-60.4-3, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Marine reserve" means an area where any and all extraction of reef-related marine life, either alive or dead, or any portion of the reef structure, including coral, rocks, plants, algae, sand, shells, or any feature of the natural reef, shall be prohibited, except as allowed in this chapter."

7. Section 13-60.4-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the marine reserves, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section [13-60.4-2(b)(1) to (10),] 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kiholo Bay fisheries management area, no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear

is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in section 13-60.4-2(b) and in the tables located at the end of this chapter entitled ["Table of Reference Coordinates to Fish Replenishment Area Boundaries", dated 9/21/11,] "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and ["Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 9/21/11:] "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

- (1) Puakō-‘Anaeho‘omalu fish replenishment area;
- [(2)] (2) Ka‘ūpūlehu fish replenishment area;
- (3)] (2) Kikaua Point-Mākole‘ā netting restricted area (Kekaha Kai State Park);
- [(4)] (3) Nenuē Point (Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;
- [(5)] (4) Hanamalo Point-Kanewa‘a Point netting restricted area;
- [(6)] (5) Kanonohe-Kalīpoa netting restricted area; and
- [(7)] (6) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, that is registered and used in compliance with section 13-60.4-6.

(d) Except as provided in subsection (e), and subject to all other applicable laws, while within the Ka‘ūpūlehu marine reserve no person may:

- (1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus* (‘ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi),

Pristipomoides zonatus (gindai), *Etelis* *coruscans* (onaga), *Etelis carbunculus* (ehu), *Epinephelus quernus* (hāpu'upu'u), *Aprion virescens* (uku), *Lutjanus kasmira* (ta'ape), *Cephalopholis argus* (roi), *Lutjanus fulvus* (toau), *Iniistius pavo* (nabeta), *Katsuwonus pelamis* (aku), *Thunnus spp.* (ahi and tomo), Family Istiophoridae (a'u), *Acanthocybium solandri* (ono), *Coryphaena spp.* (mahimahi); and provided further that *Ranina ranina* (kona crab) may be taken by kona crab nets only, while seaward of the twenty fathom (120 feet) depth contour;

(2) Possess any specimen of marine life other than the species listed in subsection (d)(1) above;

(3) Possess or use any fishing gear other than hook-and-line or kona crab nets or both; or

(4) Deploy any fishing gear (including hook-and-line or kona crab nets) shoreward of the twenty fathom (120 feet) depth contour.

(e) The department may issue permits in accordance with sections 187A-6 and 188-53, Hawaii Revised Statutes, for the take of non-native or invasive species of fish and invasive algae from the Ka'ūpūlehu Marine Reserve.

(f) Subsections (d) and (e) of this section shall be effective until June 30, 2026, or until the effective date of rules implementing a comprehensive fisheries management plan as developed by the department in consultation with the Ka'ūpūlehu community and other interested parties, whichever occurs later." [Eff 12/26/13, am]

(Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

8. Material, except source notes, to be repealed is bracketed. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.

10. These amendments to chapter 13-60.4, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on May 27, 2016, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

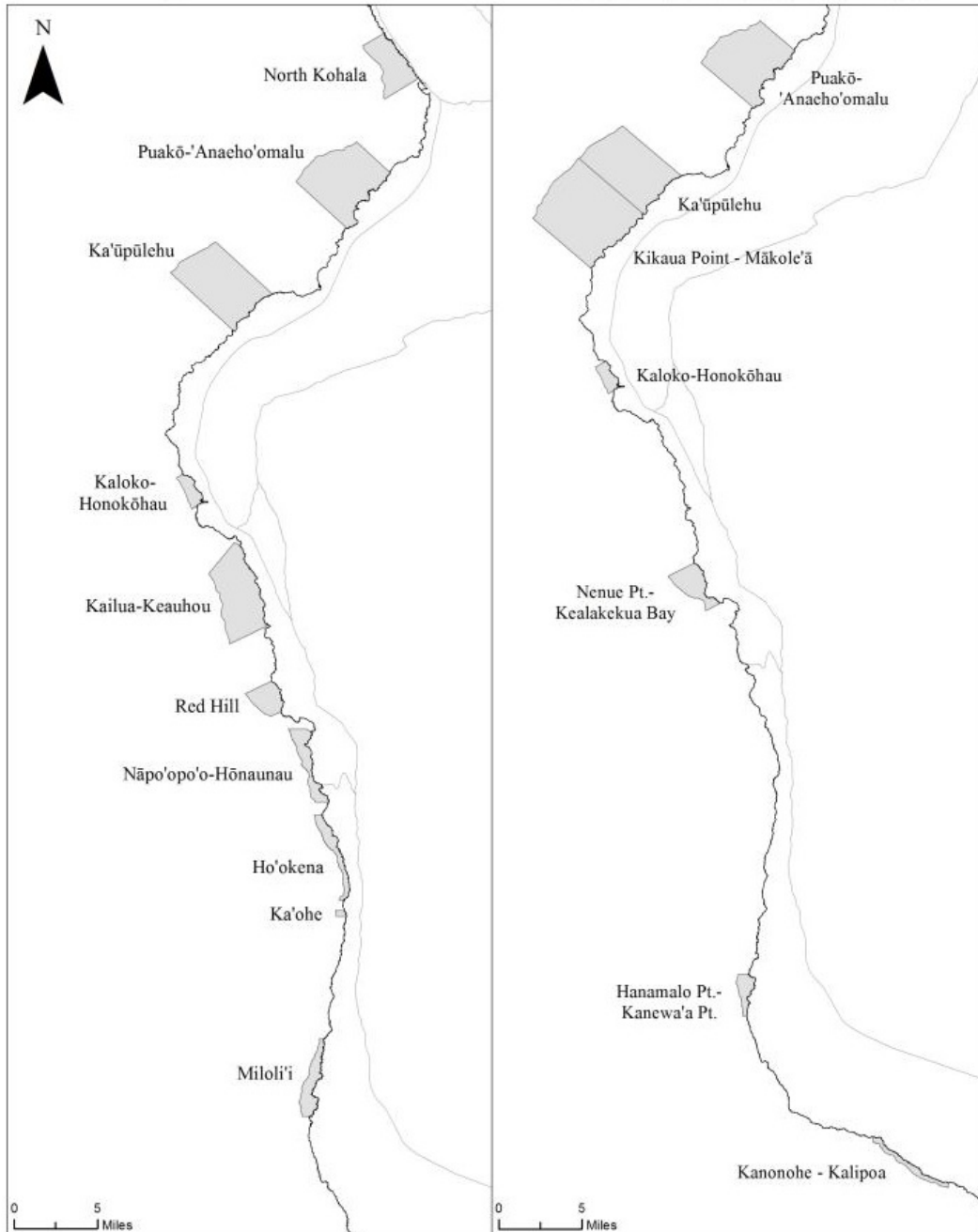
APPROVED AS TO FORM:

Deputy Attorney General

**Map of Marine Reserve, Fish Replenishment Area, and
Netting Restricted Area Boundaries* (12/12/12)**

**Marine Reserves and
Fish Replenishment Areas**

Netting Restricted Areas



*Maps and tables do not reflect regulated areas and their specific prohibitions (including gear restrictions) that are defined in other chapters, as described in section 13-60.4-5(c)

**Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries
(12/12/12)**

Area	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
North Kohala FRA	20° 04.826' N	20° 02.471' N	20° 04.378' N	1.40	20° 01.654' N	1.94	225°
	155° 51.934' W	155° 49.988' W	155° 53.344' W		155° 51.875' W		225°
Puakō – ‘Anaeho‘omalū FRA	19° 57.529' N	19° 54.641' N	19° 59.206' N	2.40	19° 57.034' N	3.54	300°
	155° 51.553' W	155° 53.893' W	155° 53.383' W		155° 56.658' W		300°
Ka‘ūpūlehu Marine Reserve	19° 51.011' N	19° 49.209' N	19° 53.817' N	3.91	19° 51.724' N	4.39	300°
	155° 58.111' W	156° 00.132' W	156° 00.994' W		156° 03.947' W		300°
Kaloko – Honokōhau FRA	19° 41.442' N	19° 40.059' N	19° 41.368' N	0.35	19° 39.844' N	0.46	240°
	156° 02.350' W	156° 01.741' W	156° 03.031' W		156° 02.169' W		240°
Kailua – Keauhou FRA	19° 37.903' N	19° 33.716' N	19° 37.089' N	2.02	19° 32.801' N	2.21	245°
	155° 59.472' W	155° 57.829' W	156° 01.449' W		156° 00.004' W		245°
Red Hill FRA	19° 30.823' N	19° 29.252' N	19° 30.166' N	1.41	19° 28.991' N	0.51	235°
	155° 57.630' W	155° 57.068' W	155° 58.953' W		155° 57.536' W		235°
Nāpo‘opo‘o – Hōnaunau FRA	19° 28.230' N ¹	19° 24.559' N	19° 28.350' N ²	1.13	19° 24.725' N	0.79	270°
	155° 55.370' W	155° 54.343' W	155° 56.898' W		155° 55.162' W		270°
Ho‘okena FRA	19° 23.796' N	19° 19.458' N	19° 23.690' N	0.40	19° 19.403' N	0.25	240°
	155° 54.685' W	155° 53.426' W	155° 55.095' W		155° 53.688' W		240°
Ka‘ohe FRA	19° 18.954' N	19° 18.714' N	19° 18.947' N	0.44	19° 18.706' N	0.48	270°
	155° 53.362' W	155° 53.296' W	155° 53.824' W		155° 53.806' W		270°
Miloli‘i FRA	19° 12.179' N	19° 08.098' N	19° 12.179' N	0.15	19° 08.160' N	0.36	270°
	155° 54.369' W	155° 55.132' W	155° 54.599' W		155° 55.510' W		270°

^{1,2} Northern Boundary runs 0.25nm along existing Kealakekua Bay MLCD southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

FRA = Fish Replenishment Area

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

**Table of Reference Coordinates to Netting Restricted Area Boundaries
(12/12/12)**

Netting Restricted Area**	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
Puakō - ‘Anaeho‘omalū	19° 57.529’ N	19° 54.641’ N	19° 59.206’ N	2.40	19° 57.034’ N	3.54	300°
	155° 51.553’ W	155° 53.893’ W	155° 53.383’ W		155° 56.658’ W		300°
Ka‘ūpūlehu	19° 51.011’ N	19° 49.209’ N	19° 53.817’ N	3.91	19° 51.724’ N	4.39	300°
	155° 58.111’ W	156° 00.132’ W	156° 00.994’ W		156° 03.947’ W		300°
Kikaua Point - Mākole‘ā	19° 49.130’ N	19° 46.356’ N	19° 52.100’ N	4.41	19° 49.000’ N	3.98	300°
	156° 00.063’ W	156° 03.024’ W	156° 03.566’ W		156° 06.164’ W		300°
Kaloko - Honokōhau	19° 41.442’ N	19° 40.059’ N	19° 41.368’ N	0.35	19° 39.844’ N	0.46	240°
	156° 02.350’ W	156° 01.741’ W	156° 03.031’ W		156° 02.169’ W		240°
Nenuē Pt. - Kealakekua Bay	19° 30.823’ N	19° 28.699’ N	19° 30.166’ N	1.41	19° 28.316’ N	0.90	235°
	155° 57.630’ W	155° 56.114’ W	155° 58.953’ W		155° 56.983’ W		235°
Hanamalo Pt. - Kanewa‘a Pt.	19° 09.273’ N	19° 07.091’ N	19° 09.275’ N	0.55	19° 07.093’ N	0.18	260°
	155° 54.973’ W	155° 55.115’ W	155° 55.564’ W		155° 55.313’ W		260°
Kanonone - Kalīpoa	19° 00.662’ N	18° 58.180’ N	19° 00.409’ N	0.25	18° 57.941’ N	0.24	200°
	155° 48.302’ W	155° 44.182’ W	155° 48.302’ W		155° 44.183’ W		200°

****Netting restrictions may also apply in marine reserves and fish replenishment areas (see map entitled “Map of Marine Reserve, Fish Replenishment, and Netting Restricted Area Boundaries”, dated 12/12/12) and in areas designated under separate chapters, as described in section 13-60.4-2(c)**

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I

- §13-60.4-1 Intent and purpose
- §13-60.4-2 Geographical jurisdiction of chapter provisions
- §13-60.4-3 Definitions
- §13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area
- §13-60.4-5 Activities prohibited within selected areas
- §13-60.4-6 Lay net registration and use requirements
- §13-60.4-7 Aquarium collecting permit and vessel registration requirements
- §13-60.4-8 Penalty
- §13-60.4-9 Severability

Historical note: Chapter 13-60.4 is based substantially upon chapter 13-60.3 and is simultaneously adopted upon repeal of that chapter. All rights, duties, penalties, and responsibilities incurred under chapter 13-60.3 are intended to be transferred to chapter 13-60.4 upon its adoption. [Eff 12/31/99; am, ren, and comp 8/1/05; R 12/26/13]

§13-60.4-1 Intent and purpose. (a) The intent and purpose of this chapter regarding the West Hawai'i regional fishery management area shall be to:

- (1) Establish the West Hawai'i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
- (2) Ensure the sustainability of the State's nearshore ocean resources;
- (3) Identify areas with resource and use conflicts;
- (4) Minimize user conflicts and resource depletion in the West Hawai'i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
- (5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
- (6) Identify areas and resources of statewide significance for protection;
- (7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
- (8) Facilitate the substantive involvement of the community in resource management decisions for the West Hawai'i regional fishery management area through dialogue with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff 12/26/13]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall

apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore, seaward to the limit of the State's police power and management authority.

(b) The following marine reserves, fish replenishment areas, and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in the exhibit entitled "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

- (1) Ka'ūpūlehu marine reserve, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);
- (2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
- (3) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);
- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
- (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
- (6) Red Hill fish replenishment area, identified

- on shore to the north at Nenuue Point and to the south by Keawakāheka Point;
- (7) Nāpo‘opo‘o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu‘uhonua o Hōnaunau (Ki‘ilae);
 - (8) Ho‘okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka‘ū Loa Point;
 - (9) Ka‘ohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka‘ū Loa Point, and to the south by signage north of ‘Au‘au Point;
 - (10) Miloli‘i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki‘o Point;
 - (11) Kikaua Point-Mākole‘ā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākole‘ā Point (near Kekaha Kai State Park);
 - (12) Nenuue Point-Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;
 - (13) Hanamalo Point-Kanewa‘a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu‘a Bay, and to the south by Kanewa‘a Point, South Kona; and
 - (14) Kanonone-Kalīpoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalīpoa, Ka‘ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude

coordinates, as provided in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12, and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area. The seaward boundary of each area shall be determined by an imaginary line drawn along the one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai'i regional fishery management area:

- (1) Lapakahi marine life conservation district, as described in chapter 13-33;
- (2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
- (3) Wailea Bay marine life conservation district, as described in chapter 13-35;
- (4) Old Kona Airport marine life conservation district, as described in chapter 13-37;

- (5) Kealakekua Bay marine life conservation district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
- (7) Kīholo Bay fisheries management area, as described in chapter 13-60;
- (8) Kailua Bay fisheries management area, as described in chapter 13-52;
- (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
- (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State. [Eff 12/26/13; am 7/29/16] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public

display, or for sale for these purposes. Aquatic life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Commercial purpose" means the taking of aquatic life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

"Department" means the department of land and natural resources.

"Deploy" means to place the specified gear in the water, in whole or in part.

"Fish feeding" means deliberately introducing into the water any food material, substance, or device used as an attractant, for any purpose except catching and removing marine life.

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to deploy and retrieve the line, and the use of a landing net to land hooked fish.

"Kona crab net" means a mesh net encircled by a rigid frame no more than three feet in length in any direction.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain

time period has passed. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

"Marine reserve" means an area where any and all extraction of reef-related marine life, either alive or dead, or any portion of the reef structure, including coral, rocks, plants, algae, sand, shells, or any feature of the natural reef, shall be prohibited, except as allowed in this chapter.

"Natural fibers" means fibers derived wholly from plant materials including, olonā, linen, cotton, hemp, and sisal.

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"SCUBA spearfishing" means to take or to attempt to take aquatic life through the combined use of a spear and SCUBA gear.

"Set" when used as a noun with respect to the use of lay nets, means a sequential act beginning from when the lay net is fully deployed in the water and ending on the next complete removal of the lay net from the water.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears. A dive knife is not considered to be a spear.

"Speared" means pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where

aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"White list" means a list of species of marine life that may be taken for aquarium purposes. [Eff 12/26/13; am 7/29/16] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area. While within the West Hawai'i regional fishery management area, no person shall:

- (1) Take, kill, possess, sell, or offer for sale, any specimen of the following species: *Aetobatus narinari* (spotted eagle ray), *Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);
- (2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than two inches in total length;
- (3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes:
 - (A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if notification by phone is made to the Division of Aquatic Resources West

- Hawai'i (DAR-Kona) office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;
- (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to section 13-60.4-7(a);
 - (C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or
 - (D) While occupying any vessel that does not conform to the registration and marking requirements of section 13-60.4-7(d);
- (4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;
 - (5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; or
 - (6) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff 12/26/13]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the **marine reserves**, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section **13-60.4-2(b)(2) to (10)**, or while within any of the areas listed in section 13-60.4-2(c) other than the Kīholo Bay fisheries management area,

no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

- (1) Puakō-‘Anaeho‘omalu fish replenishment area;
- (2) Kikaua Point-Mākole‘ā netting restricted area (Kekaha Kai State Park);
- (3) Nenu Point (Red Hill fish replenishment area)-Kealakekua Bay netting restricted area;
- (4) Hanamalo Point-Kanewa‘a Point netting restricted area;
- (5) Kanonohe-Kalīpoa netting restricted area; and
- (6) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, that is registered and used in compliance with section 13-60.4-6.

(d) Except as provided in subsection (e), and subject to all other applicable laws, while within the Ka‘ūpūlehu marine reserve no person may:

- (1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus*

(‘ōpakapaka), *Pristipomoides sieboldii* (kalekale), *Aphareus rutilans* (lehi), *Pristipomoides zonatus* (gindai), *Etelis coruscans* (onaga), *Etelis carbunculus* (ehu), *Epinephelus quernus* (hāpu‘upu‘u), *Aprion virescens* (uku), *Lutjanus kasmira* (ta‘ape), *Cephalopholis argus* (roi), *Lutjanus fulvus* (toau), *Iniistius pavo* (nabeta), *Katsuwonus pelamis* (aku), *Thunnus* spp. (ahi and tombo), Family *Istiophoridae* (a‘u), *Acanthocybium solandri* (ono), *Coryphaena* spp. (mahimahi); and provided further that *Ranina ranina* (kona crab) may be taken by kona crab nets only, while seaward of the twenty fathom (120 feet) depth contour;

(2) Possess any specimen of marine life other than the species listed in subsection (d) (1) above;

(3) Possess or use any fishing gear other than hook-and-line or kona crab nets or both; or

(4) Deploy any fishing gear (including hook-and-line or kona crab nets) shoreward of the twenty fathom (120 feet) depth contour.

(e) The department may issue permits in accordance with sections 187A-6 and 188-53, Hawaii Revised Statutes, for the take of non-native or invasive species of fish and invasive algae from the Ka‘ūpūlehu Marine Reserve.

(f) Subsections (d) and (e) of this section shall be effective until June 30, 2026, or until the effective date of rules implementing a comprehensive fisheries management plan as developed by the department in consultation with the Ka‘ūpūlehu community and other interested parties, whichever occurs later. [Eff 12/26/13, am 7/29/16] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-6, 190-3)

§13-60.4-6 Lay net registration and use requirements. (a) It is unlawful for any person within the West Hawai‘i regional fishery management area to:

(1) Possess or use a lay net that has not been

registered with the department;

- (2) Possess or use more than one lay net;
- (3) Possess or use a lay net:
 - (A) Longer than one hundred twenty-five feet in length or more than seven feet in stretched height;
 - (B) With less than two and three-fourths inches stretched mesh; and in Kailua Bay fisheries management area, with less than three inches stretched mesh; or
 - (C) With two or more joined lay nets with a combined total length of more than two hundred fifty feet;
- (4) Possess or use a multi-panel lay net; or
- (5) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net.

to:

- (b) It is unlawful for any person lay net fishing
 - (1) Use a lay net that is not marked by buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
 - (2) Use a lay net within one thousand two hundred feet of any other lay net; provided that two or more individuals working together and using the lay net fishing method may use a joined net;
 - (3) Use a lay net in water that is more than eighty feet in depth;
 - (4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be set again within twenty-four hours after the ending of the set; and provided further that the same person shall not set any other lay net within

that twenty-four hour period after the ending of the set;

- (5) Leave a lay net unattended for more than one-half hour;
- (6) Retrieve a lay net in such a manner as to cause coral to break from its attachment to the bottom or to break into smaller pieces. Any coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
- (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species; or
- (8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours.

(c) It is unlawful for any person to falsely identify, with identification tags, any lay net that is not registered with the department as required in subsection (a) (1) and (a) (5).

(d) Persons using a vessel or float may use a total maximum of two hundred fifty feet of lay net, provided that at least two persons are present and associated with the same vessel or float.

(e) Should any registered lay net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the department.

(f) Any lay net within the West Hawai'i regional fishery management area that is not registered or does not have proper identification tags, as required in subsection (a) (1) and (a) (5), shall be subject to immediate seizure according to section 199-7, HRS, and subject to forfeiture by the department under procedures similar to chapter 712A, Hawaii Revised Statutes.

(g) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and

three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession under an aquarium permit and a West Hawai'i aquarium permit issued under section 13-60.4-7(a). [Eff 12/26/13]
 (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

§13-60.4-7 Aquarium collecting permit and vessel registration requirements. (a) West Hawai'i aquarium permit. The department may issue West Hawai'i aquarium permits authorizing persons to engage in aquarium collecting activities for species listed in subsection (b) and to use fine meshed traps and nets (other than throw nets) to collect those species in the West Hawai'i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by the issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai'i regional fishery management area without first having been issued and possessing a West Hawai'i aquarium permit in addition to a valid State of Hawai'i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the department may revoke any West Hawai'i aquarium permit for any infraction of these rules or the terms and conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai'i aquarium permit until the expiration of one year from the date of revocation.

(b) Aquarium species white list. In addition to other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles*

(Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jactator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian Dascyllus), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia* (eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:

- (1) No *Zebrasoma flavescens* (yellow tang) may be taken or possessed in violation of section 13-60.4-4(2);
- (2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time; and
- (3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.

(c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:

- (1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;
- (2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise specified, the "AQ" letters shall be no less than six inches high and three inches wide in either black or a color that contrasts with the background;
- (3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as specified by the department. The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard;
- (4) Display a dive flag at all times when divers are in the water; and
- (5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area

commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.

(e) Nothing in this chapter shall prevent the department from establishing another control date. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

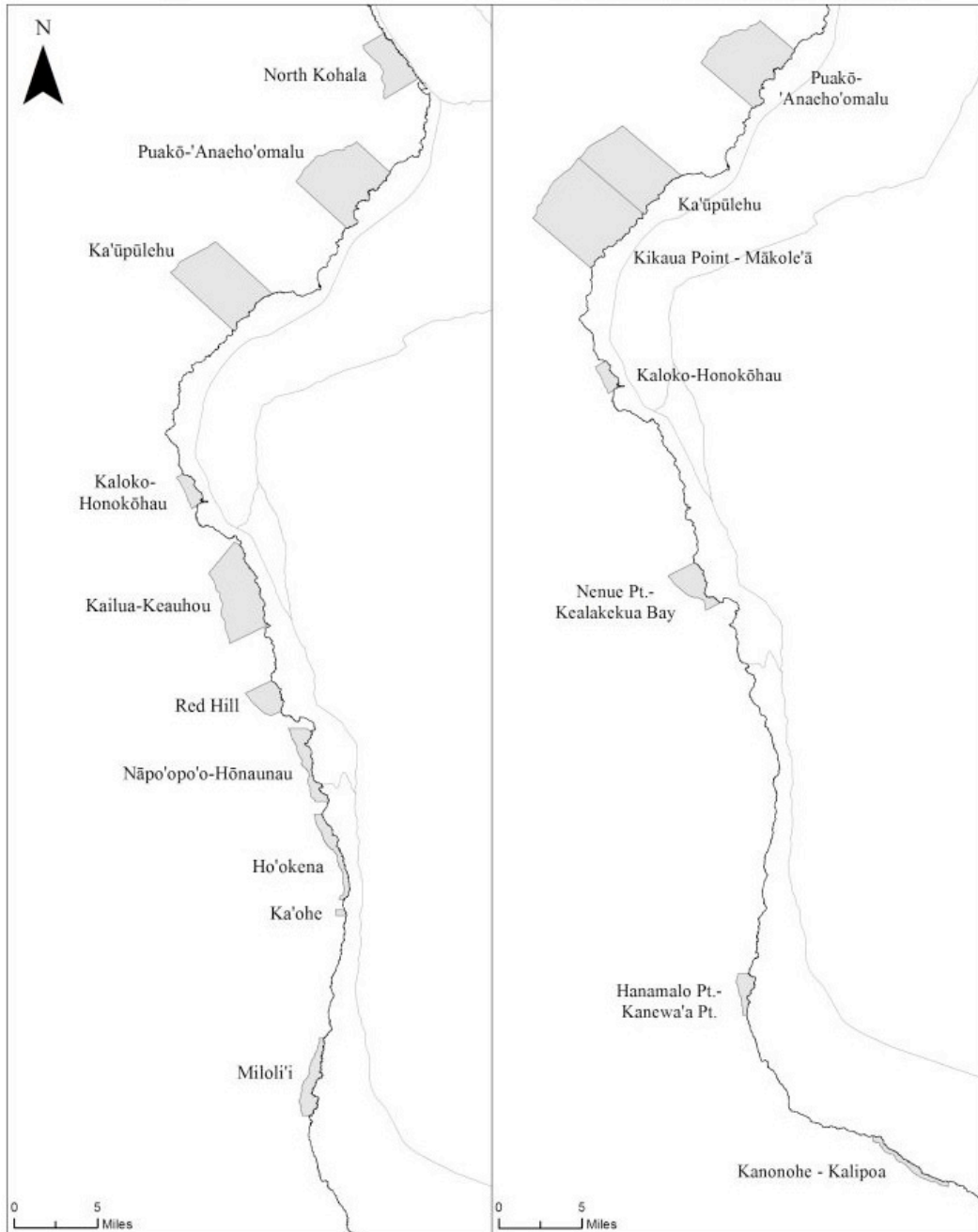
§13-60.4-8 Penalty. Any person violating any provision of this chapter, or any term or condition of any permit issued pursuant to this chapter, shall be subject to the provisions of sections 187A-12.5 and 188-70, Hawaii Revised Statutes, or as may be otherwise provided by law. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

**Map of Marine Reserve, Fish Replenishment Area, and
Netting Restricted Area Boundaries* (12/12/12)**

**Marine Reserves and
Fish Replenishment Areas**

Netting Restricted Areas



*Maps and tables do not reflect regulated areas and their specific prohibitions (including gear restrictions) that are defined in other chapters, as described in section 13-60.4-5(c)

**Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries
(12/12/12)**

Area	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
North Kohala FRA	20° 04.826' N	20° 02.471' N	20° 04.378' N	1.40	20° 01.654' N	1.94	225°
	155° 51.934' W	155° 49.988' W	155° 53.344' W		155° 51.875' W		225°
Puakō – ‘Anaeho‘omalū FRA	19° 57.529' N	19° 54.641' N	19° 59.206' N	2.40	19° 57.034' N	3.54	300°
	155° 51.553' W	155° 53.893' W	155° 53.383' W		155° 56.658' W		300°
Ka‘ūpūlehu Marine Reserve	19° 51.011' N	19° 49.209' N	19° 53.817' N	3.91	19° 51.724' N	4.39	300°
	155° 58.111' W	156° 00.132' W	156° 00.994' W		156° 03.947' W		300°
Kaloko – Honokōhau FRA	19° 41.442' N	19° 40.059' N	19° 41.368' N	0.35	19° 39.844' N	0.46	240°
	156° 02.350' W	156° 01.741' W	156° 03.031' W		156° 02.169' W		240°
Kailua – Keauhou FRA	19° 37.903' N	19° 33.716' N	19° 37.089' N	2.02	19° 32.801' N	2.21	245°
	155° 59.472' W	155° 57.829' W	156° 01.449' W		156° 00.004' W		245°
Red Hill FRA	19° 30.823' N	19° 29.252' N	19° 30.166' N	1.41	19° 28.991' N	0.51	235°
	155° 57.630' W	155° 57.068' W	155° 58.953' W		155° 57.536' W		235°
Nāpo‘opo‘o – Hōnaunau FRA	19° 28.230' N ¹	19° 24.559' N	19° 28.350' N ²	1.13	19° 24.725' N	0.79	270°
	155° 55.370' W	155° 54.343' W	155° 56.898' W		155° 55.162' W		270°
Ho‘okena FRA	19° 23.796' N	19° 19.458' N	19° 23.690' N	0.40	19° 19.403' N	0.25	240°
	155° 54.685' W	155° 53.426' W	155° 55.095' W		155° 53.688' W		240°
Ka‘ohe FRA	19° 18.954' N	19° 18.714' N	19° 18.947' N	0.44	19° 18.706' N	0.48	270°
	155° 53.362' W	155° 53.296' W	155° 53.824' W		155° 53.806' W		270°
Miloli‘i FRA	19° 12.179' N	19° 08.098' N	19° 12.179' N	0.15	19° 08.160' N	0.36	270°
	155° 54.369' W	155° 55.132' W	155° 54.599' W		155° 55.510' W		270°

^{1,2} Northern Boundary runs 0.25nm along existing Kealakekua Bay MLCD southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

FRA = Fish Replenishment Area

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

**Table of Reference Coordinates to Netting Restricted Area Boundaries
(12/12/12)**

Netting Restricted Area**	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
Puakō - ‘Anaeho‘omalu	19° 57.529’ N	19° 54.641’ N	19° 59.206’ N	2.40	19° 57.034’ N	3.54	300°
	155° 51.553’ W	155° 53.893’ W	155° 53.383’ W		155° 56.658’ W		300°
Ka‘ūpūlehu	19° 51.011’ N	19° 49.209’ N	19° 53.817’ N	3.91	19° 51.724’ N	4.39	300°
	155° 58.111’ W	156° 00.132’ W	156° 00.994’ W		156° 03.947’ W		300°
Kikaua Point - Mākole‘ā	19° 49.130’ N	19° 46.356’ N	19° 52.100’ N	4.41	19° 49.000’ N	3.98	300°
	156° 00.063’ W	156° 03.024’ W	156° 03.566’ W		156° 06.164’ W		300°
Kaloko - Honokōhau	19° 41.442’ N	19° 40.059’ N	19° 41.368’ N	0.35	19° 39.844’ N	0.46	240°
	156° 02.350’ W	156° 01.741’ W	156° 03.031’ W		156° 02.169’ W		240°
Nenu Pt. - Kealakekua Bay	19° 30.823’ N	19° 28.699’ N	19° 30.166’ N	1.41	19° 28.316’ N	0.90	235°
	155° 57.630’ W	155° 56.114’ W	155° 58.953’ W		155° 56.983’ W		235°
Hanamalo Pt. - Kanewa‘a Pt.	19° 09.273’ N	19° 07.091’ N	19° 09.275’ N	0.55	19° 07.093’ N	0.18	260°
	155° 54.973’ W	155° 55.115’ W	155° 55.564’ W		155° 55.313’ W		260°
Kanonone - Kalīpoa	19° 00.662’ N	18° 58.180’ N	19° 00.409’ N	0.25	18° 57.941’ N	0.24	200°
	155° 48.302’ W	155° 44.182’ W	155° 48.302’ W		155° 44.183’ W		200°

****Netting restrictions may also apply in marine reserves and fish replenishment areas (see map entitled “Map of Marine Reserve, Fish Replenishment, and Netting Restricted Area Boundaries”, dated 12/12/12) and in areas designated under separate chapters, as described in section 13-60.4-2(c)**

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

Modified

30) HAR § 13-256-152

Relating to: **Kahaluu Bay Ocean Waters**

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

October 9, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: REQUEST APPROVAL TO ADOPT AMENDMENTS TO HAWAII ADMINISTRATIVE RULES (HAR), TITLE 13, SECTION 256-152, KAHALUU BAY, IN ORDER TO UPDATE LOCATION DESIGNATIONS, LIMIT COMMERCIAL SURF INSTRUCTION, AND REVISE SWIM AND SURF ZONE RESTRICTIONS WITHIN KAHALUU BAY

PURPOSE: The purpose of this amendment is to reorganize Kahaluu Bay to clearly designate swim and surf zones and additionally to regulate surf schools within Kahaluu Bay in order to limit the number of commercial surf schools allowed to operate in the bay and to enforce a teacher/student ratio for surfing instruction. Additionally, the amendment to HAR § 13-256-152 updates the rule to use GPS coordinates to describe zone designations and updates the corresponding exhibit to the rule to a current map in order to create a more user-friendly rule (See Exhibit A).

STATUTE: Hawaii Revised Statutes §§ 200-2, 200-3, 200-4, 200-14, 200-14.5

BACKGROUND:

On January 9, 2015, as Item J-1 of the agenda, the Board of Land and Natural Resources (Board) approved the Division of Boating and Ocean Recreation's (DOBOR) request to initiate rule making regarding amendments to HAR § 13-256-152, to modify swim and surf zone designations and limit commercial surf instruction in Kahaluu Bay as well as introduce an updated exhibit map for Kahaluu Bay.

Upon approval by the Board to proceed to public hearing, DOBOR submitted the draft rule to the Small Business Regulatory Review Board (SBRRB) for comment on February 12, 2015 and received the unanimous approval of the SBRRB on February 18, 2015 to proceed with the rule as written. DOBOR also requested approval from the Governor to proceed to public hearing on January 27, 2015 and approval was received on February 17, 2015. On March 29, 2015 DOBOR placed legal ads in the Star Advertiser, West Hawaii Today and the Hawaii Tribune Herald, in accordance with Chapter 91 HRS. DOBOR also worked with the DLNR Public Information Office to issue a press release, posted notice of the public hearing on the DLNR Facebook feed and updated the website to include the notice of public hearing and a copy of the proposed amendment.

The public hearing was held on April 29, 2015 at Kealakehe High School in Kailua Kona from 6 P.M. – 8 P.M. Approximately 25 people signed the attendance sheets for the meeting with 6 individuals providing oral testimony. A total of 18 pieces of written testimony were received by US Postal Service, Facsimile, hand delivery, or by email.

Sixteen individuals who provided written or oral testimony were opposed to the proposed rule. Those opposed to the rule had a variety of viewpoints. Several of the individuals opposed to the proposed rule were concerned about a potential exclusion of the public from the surf zone which is a misunderstanding of the rule. The proposed rule exclusively limits *commercial* surf instruction to 4 permitted entities who are only allowed to operate within the surf zone. The general public is not restricted in any way from use of the bay with the exception that surfboards and other vessels are not allowed into the swim zone which is restricted for swimming purposes only. Other opposition testimony included opposition on any restriction for canoes, opposition to the limitation of 4 commercial surf permits and opposition to any buoy or marker within the bay which would interrupt the view plane or aesthetic of the bay.

Eight individuals who provided written or oral testimony supported the rule stating that the limitation of commercial surf instruction within the bay is necessary to prevent the crowding caused by the use of Kahaluu Bay as a surf instruction site. Issues raised by those in support were the current amount of crowding and illegal parking around the bay, the safety issues posed by the number of commercial activities in the Bay, and that restriction on commercial activity would provide more opportunity for local residents to enjoy the bay. Those in support of the rule also requested amendments to clarify that all types of surfing were allowed (not just surf boarding), that snorkeling would be allowed throughout the Bay, and that the number of permitted surf instruction activities be decreased even further.

DOBOR initiated the Kahaluu Bay rule amendment at the request of the public in response to legitimate concerns regarding overcrowding in the bay. The proposed amendments were drafted in cooperation with several community groups and address the issues of overcrowding and commercial activity in a manner that allows limited commercial activity as well as an increased opportunity for both residents and visitors to engage in safe recreational activity in the Bay. The rule does not infringe upon or limit the public's use of, or access to Kahaluu Bay, but rather works to continue maintaining the integrity of the bay as a popular recreational site. Having considered all the testimony received during the public hearing process for the aforementioned rule, DOBOR does not find that any additional amendments to the substantive portions of the proposed rule are necessary.

RECOMMENDATIONS:

That the Board

1. Approve and adopt the proposed amendments to HAR § 13-256-152.

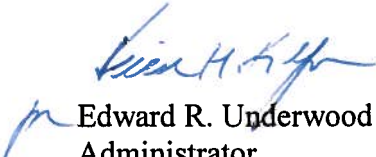
Request Approval to Adopt Amendments to
Hawaii Administrative Rules (HAR), Title 13,
Section 256-152, Kahaluu Bay, in Order to Update
Location Designations, Limit Commercial Surf
Instruction, and Revise Swim and Surf Zone
Restrictions Within Kahaluu Bay

October 9, 2015

Item J-1

2. Forward the HAR to the Governor's Office for final approval and filing with the Office of the Lieutenant Governor.

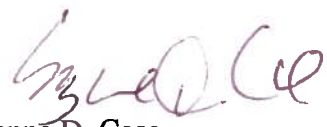
Respectfully submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A (HAR Chapter 256, Exhibit H-5, Kahaluu Bay Ocean Waters Map).

APPROVED FOR SUBMITTAL



Suzanne D. Case
Chairperson

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

Amendment to Section 13-256-152
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-256-152, Hawaii Administrative Rules, is amended to read as follows:

~~"§13-256-152 Kahaluu Bay [Swimming Zone] ocean waters. [(a) Kahaluu Bay Swimming Zone means the area confined by the boundaries shown on Exhibit "H-1", dated February 7, 1990 and located at the end of this subchapter. The boundaries are as follows:~~

~~—Beginning at a point at the low water mark of Kalaau o Kalakani Point, then by azimuth measured clockwise from True South, 166 degrees to a point on the low water mark on the northern side of the Kahuluu Bay, then along the shoreline in a southerly direction to the point of beginning.~~

~~(b) Restrictions. Kahaluu Bay Swimming Zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone.~~

(a) Kahaluu Bay ocean waters means the area shown on Exhibit "H-5", dated November 20, 2014, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahuluu Bay at Kamoa Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.

(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone. No commercial water sports instruction or commercial tours may be conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay Zone A is described as follows: Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north easterly ending at the point of beginning.

(1) Restrictions. Zone A is designated as a surfing zone.

(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.

(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one-to-four instructor-to-student ratio must be maintained at all times while in the water.

(4) The instructor shall, at a minimum, possess a current Red Cross advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.

(5) The department may designate the site of instruction within Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.

(c) Kahaluu Bay Zone B is described as follows: Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly

direction ending at Kalaau O Kalakani Point at the point of beginning.

(1) Restrictions. Zone B is designated as a swim zone. No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.


[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.
3. Additions to update source notes to reflect this amendment is not underscored.
4. The amendment to section 13-256-152, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

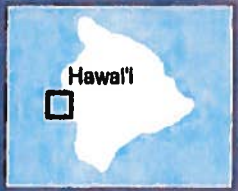
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:


Deputy Attorney General

KAMOA POINT



Hawai'i



Zone location is approximate
Map Date: Nov 20, 2014
§13-258-152 HAR

Kahaluu Bay
Ocean Waters

Hand
Rail

ZONE A

Pyramid
Rock

ZONE B

Life Guard
Station

KALAAU O KALAKANI POINT

**EXHIBIT H-5: KAHALUU BAY OCEAN WATERS
Ocean Recreation Management Area**



-  ZONE A - SURFING
-  ZONE B - SWIMMING

Exhibit A

§13-256-152 Kahaluu Bay ocean waters. (a)Kahaluu Bay ocean waters means the area shown on Exhibit "H-5", dated November 20, 2014, located at the end of this subchapter and incorporated herein. The boundaries are as follows:—Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahuluu Bay at Kamoia Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.

- (1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone.
- (2) No commercial water sports instruction or commercial tours may be conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay Zone A is described as follows: Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south-easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north-easterly ending at the point of beginning.

- (1) Restrictions. Zone A is designated as a surfing zone.
- (2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.
- (3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one-to-four instructor-to-student ratio must be maintained at all times while in the water.

- (4) The instructor shall, at a minimum, possess a current advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.
- (5) The department may designate the site of instruction within Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.
- (c) Kahaluu Bay Zone B is described as follows: Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards north-westerly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly direction ending at Kalaau O Kalakani Point at the point of beginning.
 - (1) Restrictions. Zone B is designated as a swim zone.
 - (2) No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes." [Eff 2/24/94; am **APR 22 2016**]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

KAMOŌA POINT



Zone location is approximate
Map Date: Nov 20, 2014
§13-256-152 HAR

Kahaluu Bay
Ocean Waters

Hand
Rail

ZONE A



Pyramid
Rock

Life Guard
Station

ZONE B

KALAAU O KALAKANI POINT

EXHIBIT H-5: KAHALUU BAY OCEAN WATERS
Ocean Recreation Management Area

-  ZONE A - SURFING
-  ZONE B - SWIMMING

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